

EXHIBIT B

PART III

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1 BY MR. BESETTE: 15:39:38	1 MR. BESETTE: Right. 15:42:15
2 Q. And just so I am clear, the 15:39:41	2 MR. COLLINS: Or does she have to go 15:42:15
3 ineffectiveness of the pricing policy is 15:39:43	3 through more stuff that she has already said? 15:42:18
4 demonstrated by them offering a credit to combat 15:39:46	4 BY MR. BESETTE: 15:42:18
5 gray marketing to the extent it existed in Canada? 15:39:50	5 Q. Just -- if that's what it is, tell me 15:42:18
6 A. The ineffective pricing policy -- 15:39:53	6 that's what it was. But what I want is a clean 15:42:20
7 ineffective pricing policy can mean all sorts of 15:39:56	7 record. 15:42:21
8 things. Lowering profit margins can be one of 15:40:00	8 What is the evidence you have to 15:42:21
9 those -- one of those -- can be -- let me back up. 15:40:05	9 say that the gray market problem that Adams Golf had 15:42:23
10 Lowering profit margins can be -- 15:40:09	10 at the time of the IPO had already begun to threaten 15:42:27
11 in the context in which a company relies on high 15:40:13	11 its relationships with retailers? 15:42:30
12 retailer profit margins can be seen as an 15:40:16	12 MR. COLLINS: Asked and answered. 15:42:32
13 ineffective pricing policy, because the company 15:40:20	13 Go ahead. 15:42:32
14 would hope to have a higher profit margin, if it 15:40:20	14 BY THE WITNESS: 15:42:32
15 could offer one. And yes, the credit acted in 15:40:24	15 A. Yeah. We have talked about this. We 15:42:33
16 similar ways. Ineffective in the sense that the 15:40:28	16 have a body of things. We have the letters from WDC 15:42:34
17 company simply wasn't able to profit as much as it 15:40:32	17 Mackenzie relating the communications or the effects 15:42:39
18 would be able to without the credit. 15:40:34	18 that it saw on retailers in Canada. We have got the 15:42:45
19 Q. Okay. So I am clear, the ineffective 15:40:36	19 written communications between authorized retailers 15:42:48
20 pricing policy that Adams suffered from pre IPO was 15:40:40	20 and the company. And then also what we have already 15:42:52
21 the credit program put in place through Mackenzie 15:40:44	21 talked about is conjecture on my part. 15:42:57
22 for those retailers who were suffering from gray 15:40:48	22 BY MR. BESETTE: 15:43:00
23 marketing in Canada? That's the ineffective pricing 15:40:51	23 Q. I just want evidence. I don't want 15:43:00
24 policy? 15:40:55	24 speculation. 15:43:02
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1 A. That is one, yes. 15:40:55	1 The evidence is, Mackenzie and the 15:43:03
2 Q. What are the other ones, if any? 15:40:57	2 retailers from Canada. And then you said written 15:43:05
3 A. I may be misrecalling it, but I 15:41:00	3 communications between other retailers and Adams 15:43:09
4 believe that in addition to the credit that was 15:41:03	4 Golf? 15:43:11
5 offered, that there was also some conversation 15:41:06	5 A. Communications between other retailers 15:43:11
6 about -- either conversation or actual action taken 15:41:08	6 and Adams Golf, and we also got also -- let me just 15:43:14
7 to reduce the retailer profit margin in Canada 15:41:11	7 see what is here. You are asking me what evidence 15:43:18
8 before the IPO. 15:41:16	8 that there were deteriorated distributor 15:43:20
9 Q. Reduce the retailer profit margin? 15:41:17	9 relationships? 15:43:28
10 A. Yes. 15:41:22	10 Q. No. First sentence of Paragraph 18, I 15:43:29
11 Q. You think that's what happened? 15:41:22	11 am asking for the evidence that supports your 15:43:32
12 A. I just said I may be misrecalling. 15:41:24	12 statement that -- 15:43:34
13 Q. And if it did happen, that would be an 15:41:26	13 A. It threatens its relationships with 15:43:34
14 example of another ineffective pricing policy? 15:41:28	14 retailers? 15:43:36
15 A. Yes. In the context of the company's 15:41:32	15 Q. Right. 15:43:37
16 business strategy, yes. 15:41:34	16 A. Yeah. In addition, there is also 15:43:38
17 Q. And on Paragraph 18 of the report, you 15:41:35	17 internal company memos that state with some degree 15:43:38
18 say, first sentence, the company had a gray market 15:41:57	18 of concern that the relationships with retailers are 15:43:42
19 problem at the time of the IPO, which had already 15:42:08	19 being harmed. 15:43:45
20 begun to threaten its relationships with retailers. 15:42:06	20 Q. That's your recollection? 15:43:46
21 So let's just take that piece. What evidence do you 15:42:10	21 A. Yes. 15:43:48
22 have to support that? 15:42:12	22 Q. Okay. And then the last part of that 15:43:48
23 MR. COLLINS: Beyond what she has 15:42:13	23 sentence, because I think we have talked about 15:43:59
24 mentioned today? 15:42:15	24 profit margins, the perception in the marketplace. 15:44:01

<p style="text-align: right;">Page 234</p> <p>1 What is the evidence that you have to support the 15:44:04 2 conclusion that at the time of the IPO, it was 15:44:06 3 already a threat -- it had already begun to affect 15:44:10 4 the perception in the marketplace? 15:44:14</p> <p>5 MR. COLLINS: Asked and answered. 15:44:16</p> <p>6 BY THE WITNESS: 15:44:19</p> <p>7 A. There I rely on the effects that the 15:44:24 8 gray market has on brand name perception, which we 15:44:27 9 have talked about. 15:44:31</p> <p>10 BY MR. BESSETTE: 15:44:34</p> <p>11 Q. Well, we have talked about the 15:44:34 12 academic literature about it that you have read. 15:44:38</p> <p>13 What is the evidence that Adams Golf's perception in 15:44:42 14 the marketplace had already begun to be affected by 15:44:45 15 gray marketing at the time of the IPO? 15:44:49</p> <p>16 MR. COLLINS: Asked and answered. 15:44:51</p> <p>17 BY THE WITNESS: 15:44:52</p> <p>18 A. There are other pieces. I don't 15:44:52 19 remember the exhibit number, there is a document -- 15:44:55 20 an internal company memo, I believe, that says that 15:44:56 21 Adams' goodwill in Canada stands to be severely 15:44:59 22 affected as a result of the gray market. Goodwill I 15:45:04 23 understand to be, especially for a company like 15:45:09 24 Adams, which relies so much on one brand, goodwill 15:45:11</p>	<p style="text-align: right;">Page 236</p> <p>1 when a company is already experiencing some 15:46:17 2 evidence -- there already is some evidence of 15:46:19 3 degrading perception, degraded perception, then I 15:46:21 4 think it is not a stretch to rely on the academic 15:46:30 5 literature about what happens to companies -- to a 15:46:33 6 company's perception in the marketplace as a result 15:46:37 7 of gray marketing. 15:46:40</p> <p>8 Q. Was the Tight Lies brand harmed -- 15:46:41</p> <p>9 Strike that. 15:46:41</p> <p>10 Did the Tight Lies brand lose its 15:46:49 11 esteem status at the time of the IPO, in your view? 15:46:52</p> <p>12 MR. COLLINS: Vague and ambiguous. 15:46:56</p> <p>13 BY THE WITNESS: 15:46:58</p> <p>14 A. It is my understanding from the 15:46:58 15 documents I reviewed that at the time of the IPO, 15:47:00 16 the Tight Lies brand was being affected, yes. 15:47:03</p> <p>17 BY MR. BESSETTE: 15:47:06</p> <p>18 Q. Well, that's a slightly different 15:47:06 19 answer to the question. My question is -- let me 15:47:07 20 rephrase it. 15:47:10</p> <p>21 Was the Tight Lies brand image 15:47:11 22 harmed, in your expert opinion, at the time of the 15:47:14 23 IPO? 15:47:17</p> <p>24 MR. COLLINS: Asked and answered. 15:47:18</p>
<p style="text-align: right;">Page 235</p> <p>1 was directly connected to its perception. 15:45:15 2 BY MR. BESSETTE: 15:45:18 3 Q. So besides the Canadian thing, 15:45:18 4 anything else, any evidence that you can point to to 15:45:23 5 support that statement? 15:45:25 6 A. The Canadian thing. And I know you 15:45:26 7 are trying to discount the academic literature, but 15:45:30 8 the academic literature is grounded in, and 15:45:30 9 empirical research. 15:45:35</p> <p>10 Q. Well, any evidence that it affected 15:45:35 11 Adams Golf? That the perception of Adams Golf, not 15:45:35 12 that theoretically it could because the literature 15:45:41 13 says it could. Is there evidence, besides the memo 15:45:45 14 that you referred to, which I think is from Chris 15:45:49 15 Beebe about the goodwill in Canada, is there any 15:45:52 16 other evidence that you've seen in anything that 15:45:55 17 you've reviewed to support the statement that Adams 15:45:56 18 Golf's perception in the marketplace had already 15:45:59 19 begun to be threatened at the time of the IPO? 15:46:02 20 A. We have all the documents we have 15:46:02 21 already discussed. In addition, and I am just going 15:46:05 22 to say it again. There is, I think it is important 15:46:08 23 to know what the trajectory of the gray market is, 15:46:11 24 and to know the effects of the gray market. And so 15:46:14</p>	<p style="text-align: right;">Page 237</p> <p>1 BY THE WITNESS: 15:47:19 2 A. If you think about it like an 15:47:20 3 infection. If you think about the gray market like 15:47:22 4 an infection. First, we have got Canada, right? 15:47:26 5 And Canada, I think we have already sort of 15:47:28 6 clarified, that in Canada there was already an 15:47:31 7 acknowledged risk and harm to the goodwill that had 15:47:33 8 been established in Canada. I think we already 15:47:40 9 talked about that. 15:47:42</p> <p>10 In respect to the United States, I 15:47:43 11 think if you think about the gray market like an 15:47:45 12 infection, the gray market can infiltrate, can get 15:47:48 13 in to a company. It can sort of latch on to a 15:47:51 14 company. And then over time it starts to manifest 15:47:55 15 its harms. So to the extent that -- so although 15:47:59 16 those harms may not have been manifesting yet within 15:48:03 17 the United States, I think the infection was already 15:48:08 18 there, which is evidenced in, for example, the 15:48:10 19 Costco documents that show that the gray market 15:48:12 20 sales were occurring in the United States prior to 15:48:15 21 the IPO. 15:48:17</p> <p>22 Q. All right. Professor -- 15:48:20</p> <p>23 MR. COLLINS: We have to stop this. 15:48:20 24 15:48:20</p>

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1 BY MR. BESETTE:	15:48:20	1 complaints because of the gray market, the gray	15:50:06
2 Q. Yeah. Because I don't think we are	15:48:22	2 market sales that were occurring in the United	15:50:09
3 still clear here. Besides -- I mean, there is	15:48:23	3 States. That's additional evidence. And then I'll	15:50:11
4 evidence that gray marketing was occurring, that	15:48:25	4 just -- harking back to the academic literature,	15:50:15
5 Costco was selling clubs pre IPO.	15:48:29	5 which I actually think is quite relevant.	15:50:21
6 A. Correct.	15:48:29	6 Q. So if I understand, returns of clubs	15:50:21
7 Q. Tell me the evidence that you have	15:48:33	7 is evidence to you that the brand image was	15:50:23
8 seen, not the literature, but the evidence that you	15:48:34	8 suffering?	15:50:26
9 have seen, that Adams Golf's Tight Lies brand, that	15:48:37	9 A. It could be.	15:50:26
10 image, was harmed at the time of IPO.	15:48:43	10 Q. But was it?	15:50:27
11 MR. COLLINS: Asked and answered.	15:48:46	11 A. It could be.	15:50:28
12 BY THE WITNESS:	15:48:47	12 Q. So you don't know as you sit here?	15:50:29
13 A. Yeah. I think you are -- you are	15:48:49	13 A. I don't know.	15:50:31
14 asking me the same question over and over again, and	15:48:49	14 Q. Okay. So how do you know that brand	15:50:32
15 I will answer it over and over again.		15 image was actually suffering at all at the time of	15:50:36
16 BY MR. BESETTE:		16 the IPO, other than could be because the literature	15:50:39
17 Q. Well, I am not getting the answer --		17 suggests it could, or because sales were going on?	15:50:43
18 MR. COLLINS: Well --		18 Can you sit here and tell me that you know or it is	15:50:47
19 BY MR. BESETTE:		19 your opinion that, based on evidence, that the brand	15:50:49
20 Q. You are talking about -- the answer	15:48:53	20 image was suffering at the time of the IPO?	15:50:52
21 you gave me before was, yeah, we have talked about	15:48:53	21 MR. COLLINS: Asked and answered.	15:50:55
22 the sales and we have talked about the goodwill.	15:48:57	22 BY THE WITNESS:	15:50:56
23 What I am asking you, is that all your answer is?	15:48:59	23 A. Okay. So we have got in Canada, we	15:50:59
24 Because my question is, what is the evidence that	15:49:03	24 have got WDC Mackenzie complaining that their	15:51:01
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1 you have to support the conclusion that the brand	15:49:05	1 authorized retailers to whom its sold were	15:51:07
2 image was harmed, and not just sales were happening,	15:49:07	2 complaining to it, presumably they were complaining	15:51:10
3 unless you are telling me that the brand image was	15:49:12	3 for a reason. One of those reasons would be that	15:51:12
4 automatically harmed because sales were happening at	15:49:14	4 they were not able to sell the Tight Lies through	15:51:15
5 Costco. Is that what you are telling me? Maybe	15:49:18	5 their retail stores. In addition, you have got	15:51:21
6 that is what you are telling me.	15:49:18	6 documents internal to the company stating that the	15:51:25
7 A. No, that's not what I'm telling you.	15:49:20	7 goodwill that it has built in Canada stands to be at	15:51:28
8 Q. Okay. So when did the brand image	15:49:21	8 deteriorated. We have got complaints from	15:51:35
9 suffer, and was it harmed at the time of the IPO?	15:49:24	9 authorized retailers in the United States	15:51:36
10 A. So you are asking -- what I feel you	15:49:28	10 complaining to the company that gray market sales	15:51:39
11 are asking me for is a definitive date on which	15:49:31	11 are going on. And then you have got the academic	15:51:42
12 the --	15:49:34	12 literature about how the gray market functions.	15:51:45
13 Q. I don't need a date. What is your	15:49:34	13 MR. COLLINS: We have to stop.	15:51:48
14 opinion?	15:49:36	14 BY MR. BESETTE:	15:51:48
15 A. I can't give you that, because the	15:49:36	15 Q. But just to be clear, all of that --	15:51:49
16 gray market doesn't work that way. So -- but sort	15:49:39	16 MR. COLLINS: One more question and we	15:51:49
17 of sitting here and thinking about it, there is	15:49:44	17 have to stop.	15:51:49
18 additional evidence.	15:49:47	18 BY MR. BESETTE:	15:51:49
19 For example, we have clubs being	15:49:49	19 Q. -- that you have said is your support	15:51:51
20 returned. We have got retailers in the United	15:49:52	20 for the fact that the brand image was suffering.	15:51:54
21 States making complaints to Adams. Those complaints	15:49:55	21 Can you tell me whether all of that means, in your	15:51:58
22 were partially because sales were -- sales were	15:49:56	22 opinion, that the brand image was suffering at the	15:52:01
23 slowing, you have got consumers who were not buying	15:49:59	23 time of the IPO?	15:52:04
24 out of the authorized retailers and were making	15:50:03	24 MR. COLLINS: Yes or no. We have to	15:52:06

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1	stop.	15:52:08	1	that don't tend to suffer, those that require
2	BY THE WITNESS:	15:52:08	2	technological innovation tend to suffer more than
3	A. Yes. Yes.	15:52:09	3	those that don't. For example. That would be one
4	(Break taken.)	16:05:40	4	example of a division.
5	BY MR. BESETTE:	16:05:40	5	Q. So a product that -- I am sorry, what
6	Q. To sort of pick up where we left off,	16:06:47	6	you say?
7	Professor, on the brand image of the Tight Lies	16:06:51	7	A. Requires technological innovation.
8	losing some of the status that it had, and I know	16:06:54	8	Q. -- requires technological innovation.
9	you have articulated the reasons why you believe	16:06:58	9	If it is a prestigious brand product and it requires
10	that to be the case at the time of the IPO. And I	16:07:01	10	technological innovation, it's more likely to suffer
11	guess I probably should have been clearer in the	16:07:12	11	brand image if it's in a Costco selling at reduced
12	questions. The brand image that I am talking about	16:07:15	12	prices than a different product that doesn't require
13	is from the point of view of the consumer. So I	16:07:20	13	technological innovation?
14	don't know if that changes anything in your	16:07:25	14	A. More likely, yes.
15	response. I mean, I think you were giving me the	16:07:27	15	Q. And that's based on academic
16	rationale for why you think the brand image of the	16:07:30	16	literature?
17	Tight Lies had suffered at the time of the IPO,	16:07:33	17	A. Yes.
18	because retailers were complaining and Mackenzie was	16:07:38	18	Q. So does it matter what the product is?
19	complaining and Beebe made a comment or a statement	16:07:41	19	So like, for example, Nike. Nike is a brand,
20	about the possibility of losing the goodwill in	16:07:45	20	prestigious brand image, but it sells a lot of
21	Canada, and all the other reasons, I am not trying	16:07:48	21	different products. Is Nike not a prestigious brand
22	to limit them, but all the other reasons you	16:07:49	22	image in your view?
23	mentioned. Do those still -- are those still the	16:07:51	23	A. I don't know if it is or not.
24	bases in your evidence for why you think the brand	16:07:54	24	Q. How about Callaway for golf clubs, is
		Page 243	Page 245	
1	image at the time of the IPO suffered in the eyes of	16:07:57	1	that a prestigious brand?
2	the consumer?	16:08:01	2	A. Yes, I believe so.
3	A. Yes.	16:08:02	3	Q. Do you know whether they are in
4	Q. Did the brand image in the eyes of the	16:08:02	4	Costcos?
5	consumer for the Tight Lies suffer because it could	16:08:06	5	A. I don't know whether they are in
6	be purchased at Costco at reduced prices?	16:08:09	6	Costcos right now.
7	A. Yes.	16:08:13	7	Q. You know they were in 1998, because
8	Q. Is it your view that any product that	16:08:14	8	you have got the press releases as part of your
9	has a prestigious brand image, Nike or whatever it	16:08:18	9	study.
10	might be, if it appears in Costco at reduced prices,	16:08:24	10	A. I know that they were -- I don't know
11	its brand image suffers?	16:08:29	11	whether they were in Costcos. I know that they were
12	A. Not any, no. Sorry. Let me be more	16:08:31	12	being gray marketed. I know that they made a
13	clear in my answer. Not every product will	16:08:33	13	disclosure about their gray market activity.
14	suffer -- not every product's brand image will	16:08:36	14	Q. Did Callaway's brand image suffer as a
15	suffer as a result of appearing in a discount retail	16:08:40	15	result of its clubs being gray marketed in 1998?
16	outlet.	16:08:44	16	MR. COLLINS: Outside the scope.
17	Q. Are there any guidelines or standards	16:08:44	17	BY THE WITNESS:
18	or anything you can point to to sort of say when one	16:08:47	18	A. I didn't study that.
19	prestigious product, its brand image will suffer	16:08:52	19	BY MR. BESETTE:
20	when it's in Costco at reduced prices and another	16:08:56	20	Q. How about TaylorMade?
21	won't?	16:09:00	21	MR. COLLINS: Outside the scope.
22	A. Yes. There is some literature that	16:09:01	22	BY THE WITNESS:
23	points to the types of products that suffer in that	16:09:03	23	A. I didn't study that.
24	respect and those that may not suffer as much or	16:09:07	24	16:11:04

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1	BY MR. BESETTE:	16:11:05	1	A. Actually, if I could -- before I do	16:14:23
2	Q. So as you sit here, you don't know if	16:11:05	2	that, if I could just -- harking back a little bit	16:14:25
3	any of the other golf manufacturers that had clubs	16:11:08	3	to some of the questioning about the brand image.	16:14:29
4	that people would classify as prestigious brands and	16:11:11	4	There is another piece that I had forgotten about.	16:14:31
5	they were appearing in Costcos, whether their brand	16:11:11	45	In the company's prospectus, there	16:14:35
6	image suffered? You didn't look at that as part of	16:11:17	6	is also a statement in there -- I am not going to	16:14:39
7	your work in this case?	16:11:21	7	get the quote exactly right, but it refers to the	16:14:40
8	A. I didn't study that.	16:11:22	8	reasons that the company limits its retail	16:14:41
9	Q. Okay. And you don't know	16:11:23	9	distribution to authorized distributors as -- one of	16:14:44
10	independently from this case, just based on your	16:11:24	10	the reasons for that is to maintain the brand's high	16:14:47
11	expertise in the gray marketing field for golf	16:11:28	11	profile or high prestige profile or something like	16:14:53
12	industry, is that right?	16:11:29	12	that. So that would also inform that conclusion.	16:14:56
13	MR. COLLINS: Outside the scope.	16:11:31	13	Q. Inform what conclusion?	16:14:59
14	Go ahead.	16:11:31	14	A. The conclusion that the gray market	16:15:00
15	BY THE WITNESS:		15	had the effects of degrading the company's brand	16:15:02
16	A. Can you ask the question again? I'm		16	image.	16:15:05
17	not sure I got the question.		17	Q. To be precise, do you mean to say that	16:15:06
18	MR. BESETTE: Can you repeat it,		18	it could or you know for a fact it did?	16:15:09
19	please?		19	A. The company had taken -- had taken the	16:15:11
20	THE WITNESS: And I don't know --	16:11:38	20	time to strategize about how it was going to	16:15:15
21	MR. COLLINS: Paul, it's quicker if	16:11:38	21	distribute its product. It decided that in order to	16:15:19
22	you just restate it.	16:11:39	22	maintain the high profile that its products had, it	16:15:21
23	MR. BESETTE: It would be better, I	16:11:39	23	would limit its retail distribution. And	16:15:25
24	think, if she repeats it.	16:11:39	24	presumably, the company was careful in making that	16:15:29
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1	(Record read.)	16:11:52	1	analysis. When the retail distribution was expanded	16:15:31
2	BY MR. BESETTE:	16:11:52	2	to include big box retailers like Costco,	16:15:39
3	Q. You don't know independent from your	16:11:53	3	presumably, that had the effects -- that had the	16:15:44
4	work in this case whether any of the other golf club	16:11:56	4	effects that the company was trying to avoid. It	16:15:51
5	manufacturers that have prestigious brands that had	16:12:01	5	had deleterious effects on the company's brand	16:15:55
6	gray marketing activity whether their brand	16:12:04	6	image.	16:15:58
7	suffered?	16:12:08	7	Q. Professor, excuse me. Aren't you just	16:15:59
8	MR. COLLINS: Outside the scope.	16:12:08	8	speculating? Aren't you just telling me that	16:16:02
9	Go ahead.	16:12:09	9	because the company said we don't want to sell to	16:16:04
10	BY THE WITNESS:	16:12:10	10	big box stores -- in order to preserve our brand	16:16:07
11	A. Yeah. I am just harking back to the	16:12:11	11	image, we are not going to sell here, and because	16:16:10
12	materials that I present in my international	16:12:13	12	they showed up there, you are saying me to me,	16:16:13
13	business transactions class. It is possible that in	16:12:15	13	without any evidence that I can see, that it	16:16:16
14	that literature there was material talking about	16:12:18	14	effected its brand image because it showed up where	16:16:19
15	Callaway's -- the negative effects that Callaway	16:12:22	15	the company didn't want it to show up.	16:16:23
16	suffered, but I am not positive.	16:12:26	16	A. If you take the prospectus in	16:16:25
17	BY MR. BESETTE:	16:12:28	17	isolation, and I made that conclusion taking into	16:16:25
18	Q. So as you sit here, you don't know	16:12:28	18	account only the prospectus, that would be highly	16:16:28
19	whether Callaway or any other golf manufacturer?	16:12:31	19	speculative. However, if you include all of the	16:16:30
20	A. I don't recall.	16:12:33	20	other documentation that I saw, and that we have	16:16:33
21	Q. Let me hand you what has been marked	16:12:34	21	already discussed, I just wanted to pointed out that	16:16:35
22	as -- a two-page document that has been marked as	16:13:05	22	that also informed my conclusion.	16:16:40
23	Exhibit 51, and have you turn to Paragraph 16 of	16:13:57	23	Q. So does it make it less speculative	16:16:42
24	your rebuttal.	16:14:20	24	for the other reasons? In other words, isn't that	16:16:45

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1 still a speculative reason that you are just piling 16:16:46	1 whether -- what it is in this document that supports 16:19:37
2 on with the other evidence that you told me about? 16:16:50	2 her contentions in Paragraph 16. 16:19:41
3 MR. COLLINS: Asked and answered. 16:16:54	3 MR. BESSETTE: I could do it that way, 16:19:43
4 BY THE WITNESS: 16:16:54	4 Todd, but I prefer not to. 16:19:46
5 A. No. 16:16:56	5 MR. COLLINS: Thank you for your 16:19:47
6 BY MR. BESSETTE: 16:16:56	6 consideration. 16:19:49
7 Q. No? 16:16:56	7 So what's the question? 16:19:50
8 A. No. 16:16:56	8 BY MR. BESSETTE: 16:19:52
9 Q. So what evidence, again, do you have, 16:16:57	9 Q. Do you need it re-read to you? 16:19:53
10 okay. I mean, let me ask you: Do you have any 16:16:59	10 A. If you can restate it, that would be 16:19:53
11 other evidence, other than what you have told me, 16:17:00	11 great. 16:19:53
12 that the brand image of Adams Golf Tight Lies 16:17:02	12 (Record read.) 16:19:53
13 suffered because it was in Costco? 16:17:07	13 BY THE WITNESS: 16:19:53
14 A. No. 16:17:09	14 A. Am I drawing the conclusion that Chris 16:20:12
15 Q. All right. Exhibit 51. You say in 16:17:09	15 Beebe was talking about double shipments and 16:20:14
16 Paragraph 16 -- 16:17:35	16 consignments in this document. I am not drawing 16:20:16
17 MR. COLLINS: Rebuttal? 16:17:38	17 that conclusion, no. 16:20:20
18 MR. BESSETTE: Rebuttal. 16:17:39	18 BY MR. BESSETTE: 16:20:22
19 BY MR. BESSETTE: 16:17:41	19 Q. But you cite it as support for your 16:20:27
20 Q. Let's just start with the bottom of 16:17:42	20 proposition stated in your paragraph? 16:20:31
21 page 8, going over to page 9. Actually, no. Let's 16:17:46	21 A. Yes, that's correct. 16:20:33
22 read the whole thing. "The gray marketing risks 16:17:54	22 Q. Why do you do that? 16:20:33
23 that Adams faced were unlike those faced by the golf 16:17:56	23 A. Because one of the ways in which 16:20:35
24 industry as a whole, not only because of the reasons 16:18:0	24 retailers could get too many clubs would be through 16:20:39
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1 stated previously herein, such as the comparatively 16:18:03	1 double shipments. 16:20:44
2 high profit margins enjoyed by Adams' retailers, 16:18:06	2 Q. Theoretically I don't disagree. 16:20:45
3 because also because Adams' retailers were, in some 16:18:11	3 Was Chris Beebe saying that there 16:20:48
4 cases, receiving twice the number of clubs they had 16:18:12	4 were double shipments or consignment sales that got 16:20:51
5 ordered as a result of double shipping and/or 16:18:14	5 excess clubs into the hands of retailers? 16:20:55
6 receiving shipments on consignment." And then you 16:18:18	6 MR. COLLINS: Asked and answered, 16:20:59
7 cite various documents. Exhibit 51 is one of those. 16:18:21	7 document speaks for itself. She just answered that. 16:21:01
8 And in 51 Chris Beebe says, 16:18:29	8 BY THE WITNESS: 16:21:01
9 "Retailers with too many clubs will cut prices or 16:18:29	9 A. I didn't use this document to support 16:21:02
10 ship to others in order to relieve the pressures of 16:18:34	10 the assertion there were double shipments. I used 16:21:03
11 excess stock," which is I think the quote that you 16:18:36	11 this document to illustrate the effects it could 16:21:03
12 have further down in Paragraph 16. 16:18:39	12 have on the company. 16:21:08
13 A. Right. 16:18:41	13 BY MR. BESSETTE: 16:21:09
14 Q. Chris Beebe wasn't talking about 16:18:41	14 Q. Which documents, then, did you use to 16:21:09
15 double shipments for consignment sales. Are you 16:18:47	15 support -- well, actually, strike that. 16:21:09
16 drawing the conclusion that he was in this document? 16:18:51	16 Are you making the assertion that 16:21:13
17 A. Let me just read that portion of the 16:18:54	17 double shipments or consignment sales occurred? 16:21:15
18 document. 16:18:57	18 A. Yes. 16:21:18
19 MR. COLLINS: You know, I have been 16:19:18	19 Q. What is your proof? 16:21:18
20 practically an angel. Can I just make a suggestion 16:19:21	20 A. I cited documents that I looked to in 16:21:19
21 and cut through this? Why don't you, in this 16:19:24	21 support of that statement. 16:21:24
22 instance and in other instances, at least consider, 16:19:27	22 Q. Are those the ones you cite here? 16:21:25
23 and I know you have your own good competent ways. 16:19:30	23 A. Yes. 16:21:27
24 Why don't you consider asking Professor Ochoa 16:19:33	24 Q. Exhibit 57, I think we have looked at. 16:21:27

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1	Oh, maybe we haven't. Let me hand you what has been	16:21:32	Exhibit 51 doesn't show that, that's not really what	16:25:15
2	marked Exhibit 57, which you cite in Paragraph 16 of	16:22:01	we talked about. We talked about specifically one	16:25:18
3	your report. This is one of the documents, I take	16:22:04	line in the document.	16:25:21
4	it, that you are using to support your assertion	16:22:06	Q. Is there anything in Exhibit 51 that	16:25:23
5	that double shipments occurred?	16:22:09	proves double shipping occurred to you?	16:25:26
6	A. I cited it, yes. Let me read the	16:22:13	A. If I read the whole document, I will	16:25:27
7	document. Specifically point C of the document.	16:22:42	let you know.	16:25:30
8	Q. I am sorry, what? Oh, point C.	16:22:46	Q. Okay. Please do.	16:25:31
9	Did you read Barney Adams'	16:22:47	MR. COLLINS: While she is reading,	16:25:46
10	testimony about this document, Professor?	16:22:50	why don't you ask her whether she has any support	16:25:48
11	A. I believe I did.	16:22:52	for that paragraph other than what she cites.	16:25:52
12	Q. Where he indicated that there were no	16:22:53	MR. BESSETTE: I might get there at	16:25:52
13	double shipments, he was characterizing this as a	16:22:56	the end.	16:25:52
14	shoot first ask questions later guilty until proven	16:22:59	MR. COLLINS: We can all get out of	16:25:55
15	innocent type thing? Did you take that into account	16:23:07	here quicker, that's all.	16:25:58
16	in your thought process?	16:23:08	MR. BESSETTE: Todd, I must not know	16:26:00
17	MR. COLLINS: You mean his statements,	16:23:08	what you know.	16:26:03
18	not his indication?	16:23:10	BY MR. BESSETTE:	16:26:28
19	BY THE WITNESS:	16:23:11	Q. Is there anything there?	16:26:29
20	A. I took it into account, yes.	16:23:11	A. No.	16:26:30
21	BY MR. BESSETTE:	16:23:15	Q. So do you know why you cited it?	16:26:30
22	Q. And disregarded it?	16:23:15	A. Because I knew that I would be citing	16:26:33
23	A. I wouldn't say disregarded it, no.	16:23:17	it lower in the paragraph.	16:26:37
24	Q. So your proof that double shipments	16:23:19	Q. Okay. So, again, to sort of cut	16:26:38
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1	occurred is Exhibit 57?	16:23:22	through some of this, everything you have cited	16:26:43
2	A. Among other things.	16:23:24	either talks about double shipping generally and	16:26:46
3	Q. Okay. Not Exhibit 51. How about	16:23:26	deposition testimony refutes that -- so, I mean, my	16:26:50
4	Exhibit 186?	16:23:29	point is, whether -- yeah. There is nothing	16:26:54
5	A. Exhibit 186?	16:23:36	specific on amounts or places other than one or two	16:26:56
6	Q. 186. Let me do this. 186 I believe	16:24:13	retailers that you've cited in this Golf Pro	16:27:00
7	is the Greaney personnel file.	16:24:16	article. So tell me how you draw from the evidence	16:27:04
8	A. Uh-huh.	16:24:21	you have cited that there were material amounts of	16:27:06
9	Q. Did you read the deposition of	16:24:22	double shipments occurring that would put in the	16:27:09
10	Mr. Greaney where he denies doing any double	16:24:24	hand of retailers quantities of clubs that they	16:27:12
11	shipments?	16:24:27	could then sell to Costco?	16:27:17
12	A. I read parts of his deposition, yes.	16:24:27	MR. COLLINS: Objection to the	16:27:18
13	Q. So besides a reference by Mr. Adams	16:24:29	rambling testimony that preceded the question.	16:27:20
14	here about the concept of double shipping, and his	16:24:35	Go ahead.	16:27:23
15	statement that he knows it occurs, and his testimony	16:24:35	BY THE WITNESS:	16:27:23
16	under oath that it hadn't happened, and	16:24:41	A. Do you have the Brewer deposition	16:27:24
17	Mr. Greaney's file where he denies under oath, and	16:24:41	testimony?	16:27:28
18	there are allegations that he did double ship. And	16:24:49	BY MR. BESSETTE:	16:27:30
19	we've already determined 51 is not a cause and	16:24:53	Q. I don't think I have it here, but you	16:27:30
20	effect on double shipping. And then you also cite	16:24:56	think something comes out of there?	16:27:35
21	here a Golf Pro article that one golf pro shop	16:25:01	A. I wouldn't have cited those pages if	16:27:36
22	received?	16:25:08	not.	16:27:36
23	A. Actually, I just want to state that	16:25:08	Q. Okay. I looked at those pages, and I	16:27:36
24	when you are sort of saying the entire document	16:25:12	can tell you that Mr. Brewer says what he says, but	16:27:37

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<p style="text-align: center;">Page 258</p> <p>1 he does say that there were no specific double 16:27:41 2 shipment issues with Jay, there were allegations of 16:27:44 3 it. But even if there were, we have got Jay 16:27:47 4 Greaney's personnel file where there are allegations 16:27:53 5 of several shipments. But my larger question is, at 16:27:57 6 most what we see from the evidence is allegations or 16:28:00 7 each if some occurred, isolated examples of double 16:28:03 8 shipping or extra shipments, whatever you want to 16:28:08 9 call it. Where is the material amounts of double 16:28:10 10 shipping, where is the evidence of that, for you to 16:28:13 11 draw the conclusion that there must have been enough 16:28:15 12 out there in the hands of retailers from double 16:28:19 13 shipping and consignment sales that allowed them to 16:28:23 14 sell to Costco and perpetuate the gray market? 16:28:27 15 MR. COLLINS: Are you asking about 16:28:29 16 some paragraph -- have you read this paragraph 16:28:29 17 carefully? What particular portion of the paragraph 16:28:31 18 are you asking her the basis for? I mean, the basis 16:28:33 19 for the paragraph is cited in the paragraph. You 16:28:38 20 can ask her, as I mentioned, whether there is any 16:28:41 21 other basis. If you have got something in 16:28:43 22 particular -- 16:28:46 23 MR. BESSETTE: Can I have an answer to 16:28:46 24 that question, please? And this will be quicker. 16:28:48</p>	<p style="text-align: center;">Page 260</p> <p>1 not have given rise to the entirety of Adams Golf's 16:29:42 2 gray market problem if there were only five or ten 16:29:42 3 clubs sold into the gray market, no. 16:29:48 4 Q. Okay. So let me just cut through it. 16:29:49 5 Your statement, I guess three from the bottom. 16:29:52 6 "Double shipments and consignments put into the 16:29:56 7 hands of retailers a certain quantity of clubs that 16:29:59 8 they might not have been able to sell for their own 16:30:04 9 customers of standard retail prices." Speculation 16:30:06 10 because you say "might not." So you don't have any 16:30:07 11 direct knowledge, is that right? 16:30:11 12 A. It is not speculation to say that 16:30:12 13 double shipments and consignment would put into the 16:30:15 14 hands of retailers a certain quantity of clubs. 16:30:19 15 That's not speculation. 16:30:19 16 Q. But that's based on the evidence you 16:30:21 17 cite above, right? 16:30:21 18 MR. COLLINS: Excuse me. Let her 16:30:21 19 finish. 16:30:21 20 BY MR. BESSETTE: 16:30:21 21 Q. Just to be clear? 16:30:24 22 MR. COLLINS: Let her finish. 16:30:25 23 Go ahead. 16:30:25 24 16:30:25</p>
<p style="text-align: center;">Page 259</p> <p>1 MR. COLLINS: Unanswerable. 16:28:51 2 BY THE WITNESS: 16:28:52 3 A. What I state in the paragraph is that 16:28:53 4 there were at least some cases of -- 16:28:53 5 MR. COLLINS: I'm sorry. Vague and 16:28:55 6 ambiguous, repetitive, unintelligible, asked and 16:28:56 7 answered. 16:28:56 8 Go ahead. 16:29:01 9 BY THE WITNESS: 16:29:02 10 A. What I state in this paragraph is that 16:29:03 11 there were -- that in some cases, Adams' retailers 16:29:05 12 were receiving twice the number of clubs they had 16:29:07 13 ordered. And what you asked me about was whether 16:29: 14 there was some material amount. You could imagine 16:29:11 15 one case of double shipment that could have given 16:29:16 16 rise to Adams Golf's entire gray market problem, if 16:29:20 17 it was big enough. 16:29:20 18 BY MR. BESSETTE: 16:29:28 19 Q. Right. But that's speculation, right? 16:29:28 20 A. That is, yeah. 16:29:29 21 Q. And we could have one or two examples 16:29:30 22 that involves five clubs and ten clubs, and would 16:29:33 23 that have given rise to the gray market problem? 16:29:37 24 A. The double shipment itself alone would 16:29:39</p>	<p style="text-align: center;">Page 261</p> <p>1 BY THE WITNESS: 16:30:25 2 A. That they might not have been able to 16:30:30 3 sell to their own customers? It would be 16:30:32 4 speculation whether they might have been able to 16:30:34 5 sell to their own customers if they held on to them 16:30:36 6 long enough. I don't know whether they -- they 16:30:38 7 might have or might not have been able to sell them 16:30:40 8 on to their own customers if they held on to those 16:30:42 9 clubs long enough. 16:30:45 10 BY MR. BESSETTE: 16:30:46 11 Q. You don't know as you sit here what 16:30:46 12 number, if any, of clubs got in the hands of 16:30:46 13 retailers through double shipping or consignment 16:30:46 14 sales, do you, Professor? 16:30:52 15 A. That's correct. 16:30:52 16 Q. And you don't know what number of 16:30:53 17 clubs, if any, that retailers, assuming they got 16:30:56 18 them through double shipments or consignment sales, 16:31:01 19 sold them to Costco? 16:31:05 20 A. That's correct. 16:31:07 21 Q. And your statement here that "This 16:31:07 22 provided a pool of clubs potentially available for 16:31:10 23 the gray market," again, we don't know how big this 16:31:12 24 pool is, you have no direct evidence whatsoever that 16:31:16</p>

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1	there was a pool, or whether any of these clubs were	16:31:19	1	at the Costco documents that you reviewed for this	16:34:15
2	sold to Costco.	16:31:22	2	litigation?	16:34:19
3	MR. COLLINS: Compound, asked and	16:31:25	3	A. Yes.	16:34:19
4	answered.	16:31:25	4	Q. That information wasn't available to	16:34:20
5	Go ahead.	16:31:27	5	Adams Golf at the time of the IPO, was it?	16:34:23
6	BY THE WITNESS:	16:31:28	6	MR. COLLINS: Foundation, speculation.	16:34:27
7	A. Correct.	16:31:28	7	BY THE WITNESS:	16:34:27
8	BY MR. BESSETTE:	16:31:29	8	A. Can you restate the question, please?	16:34:30
9	Q. Okay. In 15 of your report, second	16:31:44	9	BY MR. BESSETTE:	16:34:30
10	sentence, when you get there. "The gray market	16:32:01	10	Q. Yes. The evidence you just cited as	16:34:30
11	distribution occurred both in the United States and	16:32:08	11	the reason for why the purchase of 8,400 clubs	16:34:32
12	in Canada when the company's golf clubs appeared in	16:32:09	12	indicated to you that sales were likely to continue	16:34:36
13	Costco stores throughout both countries." I'm	16:32:13	13	or intensify was because they only actually sold	16:34:39
14	sorry. Initial report. Is that where you are?	16:32:16	14	half of what they purchased. My question is, that	16:34:44
15	A. I am in the initial report, the second	16:32:18	15	information was not available to Adams Golf at the	16:34:48
16	sentence of 15, "The gray market distribution	16:32:21	16	time of the IPO, was it?	16:34:52
17	occurred," okay.	16:32:26	17	MR. COLLINS: Same objection.	16:34:55
18	Q. Yeah. "When the company's golf clubs	16:32:26	18	BY THE WITNESS:	16:34:56
19	appeared in Costco stores throughout both countries	16:32:28	19	A. Those numbers were not available to	16:34:57
20	and in other unauthorized stores." What do you mean	16:32:33	20	the company at the time of the FPO. What was	16:34:57
21	by other unauthorized stores?	16:32:36	21	available was a view of the trend of gray marketing	16:34:58
22	A. There is some evidence that there was	16:32:36	22	that the company was experiencing prior to the IPO.	16:35:03
23	gray marketing occurring in some parts of the	16:32:39	23	BY MR. BESSETTE:	16:35:03
24	country through stores other than Costco.	16:32:43	24	Q. And what information did the company	16:35:03
		Page 263	Page 265		
1	Q. What is that evidence?	16:32:45	1	have available to it on the trend?	16:35:06
2	A. I don't recall at the moment.	16:32:46	2	MR. COLLINS: Asked and answered.	16:35:08
3	Q. What other stores?	16:32:47	3	BY THE WITNESS:	16:35:09
4	A. I don't recall at the moment.	16:32:48	4	A. What it had available to it was	16:35:09
5	Q. Did you document that in your report	16:32:51	5	reports from -- every one who received reports about	16:35:12
6	anywhere?	16:32:55	6	it prior to the IPO, so retailers, authorized	16:35:16
7	A. I don't believe I cited it, no. I	16:32:55	7	retailers, distributors, and from seeing the clubs	16:35:18
8	didn't cite it here. I don't remember if I cited it	16:32:58	8	in stores from sending -- I believe they were	16:35:23
9	anywhere else.	16:32:59	9	sending out the regional account coordinators, I	16:35:27
10	Q. Let me ask you, further down in that	16:33:00	10	think they were called, into their regions to see	16:35:31
11	paragraph, actually on the next page, page 6, still	16:33:31	11	whether the clubs were available in Costco stores.	16:35:33
12	in that paragraph, I guess it is in Item 4. "Costco	16:33:34	12	There were a number of places and sources of	16:35:36
13	records indicate that at the time of the IPO, Costco	16:33:41	13	information the company was using in order to try to	16:35:38
14	had purchased over 8,400 clubs, indicating that gray	16:33:44	14	determine its gray market problem.	16:35:40
15	market sales were likely to continue or intensify."	16:33:50	15	BY MR. BESSETTE:	16:35:43
16	What about the purchase of 8,400 clubs leads you to	16:33:54	16	Q. And are you aware of evidence showing	16:35:43
17	the conclusion that gray market sales were likely to	16:33:58	17	that sometime in April that the supply of Adams Golf	16:35:43
18	continue or intensify?	16:33:59	18	Tight Lies in Canada had sold through? Do you	16:35:48
19	A. Costco had sold less than half of that	16:33:59	19	remember seeing any evidence to that effect?	16:35:51
20	number at the time of the IPO. Costco continued to	16:34:00	20	A. Say that again? Sorry.	16:35:53
21	hold the remainder of those clubs, and that would	16:34:06	21	MR. BESSETTE: Can you repeat that,	16:35:53
22	indicate that they intended to sell them, indicating	16:34:08	22	please?	16:35:53
23	that the gray market sales were likely to continue.	16:34:11	23	(Record read.)	16:36:07
24	Q. And that's for the benefit of looking	16:34:13	24	MR. COLLINS: The document speaks for	16:36:07

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1	itself.	16:36:09	1 the magazine is talking about forward -- things that 16:38:25
2	Go ahead.	16:36:09	2 are happening in the future that happened in July. 16:38:28
3	BY THE WITNESS:	16:36:10	3 So things that are happening in the future that 16:38:32
4	A. I believe there was a document that	16:36:10	4 happened at the end of July. So if it was published 16:38:35
5	talks about the first shipment having sold through	16:36:12	5 after August 1st, you would assume that would be in 16:38:38
6	or anticipating the first shipment would sell	16:36:14	6 the past rather than the future, right? The end of 16:38:41
7	through.	16:36:17	7 July was in the past relative to August 1st. 16:38:43
8	BY MR. BESETTE:	16:36:17	8 Q. I don't understand that. 16:38:46
9	Q. So what evidence are you relying on to	16:36:17	9 A. Okay. There are references, and I 16:38:48
10	say that the trend -- that Adams Golf should have	16:36:21	10 don't remember the exact references I would have to 16:38:50
11	been aware that sales through Costco were likely to	16:36:24	11 read the magazine again. There are references -- my 16:38:52
12	continue or intensify after April 1998?	16:36:28	12 recollection is that there are references to things 16:38:55
13	MR. COLLINS: Asked and answered.	16:36:31	13 that are happening at the tail end of July as if 16:38:59
14	BY THE WITNESS:	16:36:32	14 those things were happening in the future. 16:39:03
15	A. The frequency with which complaints	16:36:33	15 Presumably the end of July, well, not presumably, 16:39:08
16	were being made was increasing. After that first	16:36:35	16 the end of July is before the beginning of August. 16:39:13
17	shipment was made, the company was also aware that	16:36:38	17 So if the magazine wasn't published until the 16:39:15
18	there were additional shipments made to Costco.	16:36:41	18 beginning of August, those things that happened at 16:39:18
19	BY MR. BESETTE:	16:36:44	19 the end of July would have, in fact, been in the 16:39:22
20	Q. And is there any evidence that Adams	16:36:44	20 past, not the future. 16:39:23
21	Golf knew what numbers, how much Costco had	16:36:50	21 Q. Well, what if the author was 16:39:23
22	purchased?	16:36:54	22 writing -- it takes a while to write an article, 16:39:25
23	A. The company was trying to determine	16:36:54	23 does it not? 16:39:27
24	those numbers and was unable to.	16:36:56	24 A. Yes. 16:39:28
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1	Q. Paragraph 21D, and actually there are	16:36:59	1 Q. I am just trying to understand why 16:39:28
2	several places in this report and your rebuttal,	16:37:14	2 that leads you to the conclusion that it was 16:39:31
3	where you reference the Golf Pro magazine?	16:37:25	3 published sometime in the middle of July? 16:39:36
4	A. Yes.	16:37:29	4 A. The writer would know when its article 16:39:38
5	Q. Which has a publish date of August 1,	16:37:29	5 was going to be published and would write taking 16:39:42
6	1998. And you say continuously in various places in	16:37:32	6 that into consideration. 16:39:46
7	your report, which was apparently available in the	16:37:37	7 Q. I see. Any other reasons why? 16:39:47
8	middle of July. So just tell me what you base that	16:37:39	8 A. No. 16:39:49
9	on?	16:37:42	9 Q. 21E, first sentence. "Consumer and 16:39:49
10	A. I base that on my lay knowledge of how	16:37:42	10 investor knowledge of gray marketing likely 16:40:05
11	it is that magazines are published. So magazines,	16:37:45	11 increased in tandem with the increase of Adams Golf 16:40:08
12	if you go to a stand in July, in the middle of July,	16:37:50	12 clubs available and/or sold through gray market 16:40:12
13	you will see a number of magazines that are dated	16:37:54	13 channels." Did you do any analysis to lead you to 16:40:16
14	August 1st or August or just August plainly.	16:37:56	14 that conclusion? Well, actually, is that a 16:40:23
15	Q. So no proof?	16:38:00	15 conclusion or speculation? 16:40:26
16	A. It is a common practice -- my	16:38:01	16 A. The word "likely" I think speaks for 16:40:28
17	perception is that it is a common practice in the	16:38:03	17 itself. 16:40:30
18	magazine publishing industry.	16:38:07	18 Q. Just for the record, what is it? 16:40:31
19	Q. Any proof?	16:38:09	19 A. It is speculative. 16:40:39
20	A. No.	16:38:10	20 MR. COLLINS: Is there a question 16:40:41
21	Q. Just an assumption?	16:38:10	21 pending or is that it? 16:40:43
22	A. Well, no. I mean, in addition to	16:38:12	22 MR. BESETTE: No. That's -- I think 16:40:44
23	that, there is also, in reading the magazine, there	16:38:13	23 that answers that one. 16:40:46
24	is some -- when you read that magazine, you see that	16:38:24	

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1 BY MR. BESSETTE:	16:40:47	1 plus sales were nonetheless included in the	16:43:52
2 Q. 28B.	16:40:49	2 company's total sales volume figures as presented to	16:43:56
3 A. Can I actually just come back to 21E	16:40:59	3 potential investors." Good point.	16:43:56
4 for a second?	16:41:02	4 Let me ask you, as presented to	16:43:58
5 Q. Sure.	16:41:03	5 potential investors where and when?	16:44:02
6 A. I just want to take a second to read	16:41:03	6 A. In the prospectus.	16:44:04
7 that paragraph to make sure I gave you a full	16:41:07	7 Q. Are there any sales numbers for the	16:44:05
8 answer. There is a little bit more that went into	16:41:09	8 second quarter of 1998 in the prospectus?	16:44:09
9 that statement. I can tell you what that was.	16:41:45	9 A. Let me look at the prospectus again.	16:44:12
10 Q. Sure.	16:41:47	10 MR. COLLINS: Can I cut this short?	16:44:14
11 A. There was some documents, again, I am	16:41:48	11 MR. BESSETTE: Yeah.	16:44:14
12 not going to remember exactly which exhibits they	16:41:53	12 MR. COLLINS: We can stipulate that	16:44:15
13 were, that talked about the nature of the golf	16:41:56	13 the second quarter numbers are not in the	16:44:16
14 industry and the rapidity with which information	16:41:59	14 prospectus.	16:44:18
15 spreads within the golf industry. And that would	16:42:04	15 MR. BESSETTE: Okay.	16:44:18
16 inform my statement that consumer investor knowledge	16:42:06	16 THE WITNESS: Great.	16:44:18
17 would increase, together with the availability of	16:42:10	17 MR. COLLINS: And Professor Ochoa is	16:44:19
18 Adams' clubs in Costcos. Right, so --	16:42:14	18 not offering --	16:44:21
19 Q. But you have no proof of that	16:42:18	19 THE WITNESS: You're right.	16:44:21
20 statement to back it up?	16:42:20	20 MR. COLLINS: -- is not offering an	16:44:22
21 A. Correct.	16:42:21	21 opinion on the second quarter financial statements.	16:44:23
22 Q. You are making an assumption based on	16:42:22	22 MR. BESSETTE: That's fine. That	16:44:30
23 something else you read?	16:42:24	23 statement is then wrong for the record. That	16:44:32
24 A. Correct.	16:42:25	24 statement is incorrect.	16:44:40
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1 Q. 28B, last sentence. You are talking	16:42:26	1 MR. COLLINS: I think we have a	16:44:47
2 about the 8,400 clubs that Costco had purchased pre	16:42:34	2 disconnect.	16:44:48
3 IPO.	16:42:59	3 BY MR. BESSETTE:	16:44:49
4 A. I'm sorry, 28B? I was in the wrong	16:42:59	4 Q. If that statement is not incorrect,	16:44:49
5 place.	16:42:59	5 tell me where and when second quarter sales numbers	16:44:50
6 Q. 28B, page 18.	16:42:59	6 were presented to potential investors?	16:44:56
7 A. Yeah.	16:42:59	7 MR. COLLINS: If you know, please	16:45:01
8 Q. You can read that paragraph. You talk	16:43:00	8 answer.	16:45:03
9 about the clubs. And you say in the last sentence,	16:43:02	9 BY THE WITNESS:	16:45:03
10 "These 8,400 plus sales were nonetheless included in	16:43:03	10 A. I don't know.	16:45:05
11 the company's total sales volume figures as	16:43:08	11 BY MR. BESSETTE:	16:45:07
12 presented to potential investors." Now, how do you	16:43:11	12 Q. So you put this statement in here	16:45:08
13 know that?	16:43:15	13 without any evidence or knowledge?	16:45:10
14 A. Because the company sold those clubs,	16:43:15	14 MR. COLLINS: About --	16:45:13
15 I would assume that they had an accurate accounting	16:43:30	15 BY THE WITNESS:	16:45:13
16 of the clubs they sold.	16:43:32	16 A. About what?	16:45:14
17 Q. Is it your understanding that the	16:43:33	17 BY MR. BESSETTE:	16:45:14
18 company presented its Q2 numbers to potential	16:43:36	18 Q. About what you say here.	16:45:16
19 investors?	16:43:41	19 A. I guess if you can give me a full	16:45:17
20 MR. COLLINS: Could you make that more	16:43:41	20 question, that would be great.	16:45:22
21 crisp, please? You mean in the IPO? In the IPO	16:43:45	21 Q. Okay. How about tell me what your	16:45:24
22 prospectus?	16:43:48	22 basis is for saying that 8,400 clubs sold to Costco	16:45:24
23 MR. BESSETTE: Anywhere.	16:43:49	23 in the second quarter were reflected in the numbers	16:45:28
24 Q. I mean, you say here, "These 8,400	16:43:50	24 of the company as presented to potential investors?	16:45:31

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1	MR. COLLINS: Asked and answered.	16:45:36	1	statement, Professor?	16:47:01
2	BY THE WITNESS:	16:45:37	2	MR. COLLINS: Asked and answered. Do	16:47:02
3	A. I don't know.	16:45:37	3	you have anything to add?	16:47:03
4	BY MR. BESETTE:	16:45:38	4	BY THE WITNESS:	16:47:03
5	Q. Is that statement correct?	16:45:38	5	A. If you look at the middle of the	16:47:03
6	A. I believe at least some portion of	16:45:40	6	paragraph, it says, "The company repeatedly stated	16:47:06
7	that statement is correct.	16:45:43	7	before and after the initial public offering," and	16:47:12
8	Q. Based on what?	16:45:44	8	there I was considering at the time after the	16:47:15
9	MR. COLLINS: Asked and answered.	16:45:46	9	initial public offering, and the company did make	16:47:17
10	BY THE WITNESS:	16:45:46	10	disclosure to its investors after its initial public	16:47:17
11	A. Not all of the 8,400 clubs were sold	16:45:47	11	offering about that quarter.	16:47:22
12	in the second quarter.	16:45:50	12	BY MR. BESETTE:	16:47:22
13	BY MR. BESETTE:	16:45:52	13	Q. Okay. So the basis for this statement	16:47:22
14	Q. Well, you say in this paragraph that	16:45:53	14	is presumably it is quarterly filing for the second	16:47:24
15	it was. Second sentence. "In all, Costco purchased	16:45:54	15	quarter that sometime after the IPO reflected Q2	16:47:28
16	in excess of 8,400 Adams Golf clubs in the second	16:45:59	16	numbers?	16:47:32
17	quarter prior to the IPO."	16:46:03	17	A. Yes.	16:47:32
18	A. Sorry. I will retract that last	16:46:05	18	Q. Is that what you had in mind at the	16:47:33
19	statement.	16:46:08	19	time you wrote this?	16:47:35
20	Q. I mean, the truth is, you don't know,	16:46:08	20	A. I don't remember exactly right now.	16:47:36
21	right? Whether the second quarter numbers presented	16:46:10	21	Q. Your rebuttal report, please.	16:47:40
22	to investors or whether they were presented to	16:46:13	22	Paragraph 9, page 5, the first part of it, second	16:48:08
23	investors?	16:46:17	23	sentence. "Information about Adams was rapidly	16:48:32
24	MR. COLLINS: Ever, is that the	16:46:18	24	spread throughout the market." Tell me what your	16:48:37
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1	question?	16:46:19	1	evidence is for that statement, please.	16:48:40
2	BY MR. BESETTE:	16:46:19	2	A. Let me read the paragraph, just one	16:48:42
3	Q. Potential investors before the IPO?	16:46:20	3	second. There was at least one document which I	16:48:44
4	MR. COLLINS: Oh, okay.	16:46:20	4	read in which the nature of the golf industry in	16:49:32
5	BY THE WITNESS:	16:46:23	5	relation to information was discussed, and it was	16:49:36
6	A. That's right.	16:46:23	6	discussed in a way that made it clear that within	16:49:38
7	MR. COLLINS: Just for the record, I	16:46:28	7	the golf industry information about companies and	16:49:42
8	haven't read the whole paragraph, but I don't think	16:46:30	8	innovations spreads rapidly.	16:49:46
9	anywhere this says that that was presented to	16:46:32	9	Q. Do you know what document that is?	16:49:50
10	potential investors in the prospectus before the	16:46:32	10	A. I don't remember right now.	16:49:51
11	IPO.	16:46:32	11	Q. Not something we have touched on	16:49:52
12	MR. BESETTE: Well, I actually asked	16:46:38	12	today?	16:49:55
13	how was it presented to potential investors. The	16:46:39	13	A. I don't believe so, no. I don't	16:49:55
14	one answer you gave me was the prospectus.	16:46:41	14	remember right now.	16:49:58
15	BY MR. BESETTE:	16:46:41	15	Q. Is that your belief as you sit here	16:49:58
16	Q. Is there another one?	16:46:42	16	today?	16:50:05
17	A. Yes. I made a mistake.	16:46:42	17	A. Yes.	16:50:05
18	Q. Okay. What is the other basis for	16:46:43	18	Q. And do you have evidence that it	16:50:05
19	saying it was presented to potential investors?	16:46:45	19	actually -- that information about Adams was spread	16:50:08
20	MR. COLLINS: Asked and answered. Do	16:46:49	20	rapidly throughout the market?	16:50:12
21	you have anything to add to what you said before?	16:46:56	21	MR. COLLINS: Apart from what she just	16:50:14
22	THE WITNESS: I don't. No.	16:46:58	22	testified to?	16:50:16
23	BY MR. BESETTE:	16:46:58	23	BY MR. BESETTE:	16:50:16
24	Q. So is there any basis for that	16:46:59	24	Q. Well, I think what you said was that	16:50:17

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1	you read something that in the golf industry	16:50:18	1	A. Yeah.
2	information does spread. What I am asking about is,	16:50:20	2	MR. COLLINS: Do you want to get to
3	do you have evidence that information about Adams	16:50:22	3	the proper page?
4	reached the market quickly?	16:50:25	4	THE WITNESS: Yeah. I am almost
5	A. Not specific information.	16:50:27	5	there.
6	Q. Paragraph 13, staying with the	16:50:36	6	BY MR. BESETTE:
7	rebuttal. Now, 13 is a long one, well, fairly long,	16:50:38	7	Q. Paragraph 21, first sentence.
8	talking about pricing policies before and after the	16:50:47	8	"According to the Grace report, at the time of the
9	IPO. And it is essentially talking about the	16:50:50	9	IPO only 2 percent of total sales occurred through
10	erosion of retail or profit margins, where, again,	16:50:54	10	Costco stores." To your understanding, is that a
11	you cite Eddie Tate, making quotes and stuff. And	16:50:58	11	true statement?
12	then you say, "In this highly competitive	16:51:04	12	MR. COLLINS: Vague and ambiguous.
13	environment, it was possible or likely that sales of	16:51:07	13	BY THE WITNESS:
14	Adams Golf clubs would decline as soon as a	16:51:10	14	A. My understanding is that that
15	competitor, such as Orlimar, offered a higher profit	16:51:13	15	statement is true. The statement that I wrote is
16	margin or the possibility of profit sharing, thus	16:51:17	16	true as I wrote it.
17	causing the competitor to gain favor with	16:51:17	17	BY MR. BESETTE:
18	retailers." You cite the Wall Street report.	16:51:20	18	Q. Okay. And what did you understand --
19	A. It should have been Web Street report.	16:51:23	19	the 2 percent of total sales occurred through Costco
20	Q. You're right. I'm sorry. The Web	16:51:26	20	stores, what do you understand that to mean?
21	Street.	16:51:26	21	A. What I understand that to mean is that
22	And so the whole paragraph is	16:51:27	22	2 percent -- exactly what it says. That 2 percent
23	dealing with eroding margins and competition. And	16:51:29	23	of the company's total sales, there was a figure
24	essentially you state the competition -- the	16:51:35	24	that was company's total sales. 2 percent of that
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1	competition could cause Adams Golf's sales to	16:51:38	1	was through Costco stores.
2	decline and margins to erode. Now, you are aware	16:51:42	2	Q. And that 2 percent is the 8,400, not
3	that Adams Golf warned of those specific risks in	16:51:46	3	the 3,915. Do you understand that?
4	the prospectus?	16:51:49	4	A. I am trying to do the math in my head
5	MR. COLLINS: Excuse me. The	16:51:49	5	right now, which I simply can't do.
6	paragraph speaks for itself.	16:51:50	6	MR. COLLINS: It is late. I am sure
7	Go ahead.	16:51:52	7	the two sides can stipulate to that.
8	Vague and ambiguous as well.	16:51:53	8	MR. BESETTE: Yeah.
9	BY MR. BESETTE:	16:51:56	9	BY MR. BESETTE:
10	Q. Let me ask you this: You are aware,	16:51:57	10	Q. I will represent to you that the 8,400
11	are you not, Professor, that Adams Golf warned in	16:52:00	11	that we have now learned through the Costco
12	its prospectus that it could suffer, because of	16:52:03	12	documents that they had purchased pre IPO in 1998
13	competition, and that margins and prices for its	16:52:09	13	represents about 2 percent or in that range of the
14	products might decline?	16:52:14	14	total pre IPO 1998 sales of Adams Golf.
15	A. Yes.	16:52:16	15	A. Okay.
16	(Break taken.)	17:25:08	16	MR. COLLINS: Is that in both quarters
17	BY MR. BESETTE:	17:25:11	17	or just the second quarter?
18	Q. All right. Professor, staying on the	17:25:45	18	MR. BESETTE: Both. First and second
19	rebuttal, moving on I believe to Paragraph 21. In	17:25:49	19	quarter, so I am saying 1998 pre IPO. So
20	connection with that, as you get there, you see you	17:25:55	20	essentially January through the end of June, since
21	cited Exhibit 74 and 98. So I have put those both	17:25:57	21	we don't know the first nine days of July.
22	right here. Do you have Exhibit 21 -- I am sorry	17:26:01	22	MR. COLLINS: One other question. Do
23	Paragraph 21, Paragraph 21 of your rebuttal	17:26:45	23	you know what percentage it is of the second quarter
24	Exhibit 304?	17:26:49	24	sales?

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1	MR. BESETTE: I believe -- off the record.	17:29:43	1	BY THE WITNESS:	17:32:19
2	(Off the record discussion.)	17:29:45 17:30:13	2	A. Well, the last part of that question was not something I was expecting. If you can give me the question again, that would be great.	17:32:21 17:32:23 17:32:25
3	5 BY MR. BESETTE:	17:30:13	5 BY MR. BESETTE:		17:32:25
4	Q. So I am trying to understand what you say here. In the second sentence you say, "This misstates the quantitative risk the gray market posed to the company in at least two ways." You say, "First, Mr. Grace bases his figure on Adams Clubs sold through Costco rather than on clubs purchased." And they purchased 8,400. What I am saying now, representing to you is the 8,400 is what is 2 percent of the company's total sales in 1998, the first two quarters. So does that still make sense?	17:30:14 17:30:15 17:30:19 17:30:19 17:30:22 17:30:27 17:30:29 17:30:33 17:30:38 17:30:42 17:30:47	6 Q. Okay. The predicate is, you say in the second sentence that this, meaning the first statement --	17:32:26 17:32:26 17:32:29	
5	MR. COLLINS: I don't think we can change that on the basis of your representation. Although we have all due respect for you, Paul. So therefore, it is what it is.	17:30:48 17:30:49 17:30:52 17:30:56	9 A. Yep.	17:32:29	
6	MR. BESETTE: Let her answer that.	17:30:58	10 Q. -- okay. 2 percent of sales occurred through Costco. You say that misstates the quantitative risk that the gray market posed for two reasons, okay, and we will get into the second. But right now, your first reason is, you are saying that, you know, they purchased 8,400, not 3,915. So since we don't want to do any math, what I am saying is, if the 8,400 that Costco purchased in the first half of 1998 represents 2 percent of Adams Golf's sales in that same time frame, okay?	17:32:30 17:32:33 17:32:36 17:32:40 17:32:42 17:32:44 17:32:49 17:32:52 17:32:56 17:33:00	
7	MR. COLLINS: That's fine.	17:31:00	20 A. Okay.	17:33:02	
8	23 BY THE WITNESS:	17:31:01	21 Q. That quantitative risk, in your mind, just the quantitative risk, is that immaterial, 2 percent?	17:33:03 17:33:08 17:33:12	
9	24 A. Again, I am not doing the math in my head.	17:31:01 17:31:03	24 MR. COLLINS: Vague and ambiguous.	17:33:12	

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1	BY MR. BESETTE:	17:31:03	1	BY THE WITNESS:	17:33:16
2	Q. Let me ask you this then: Your distinction here, your first point you are making is that Mr. Grace must have -- that the 2 percent of sales misstates the quantitative risks because Costco purchased 8,400 not 3,915, and you are assuming in this paragraph that the 2 percent is reflective of the 3,915, is that right?	17:31:04 17:31:07 17:31:09 17:31:13 17:31:17 17:31:22 17:31:25	2	A. Is it immaterial? No.	17:33:17
3	A. I think the Grace report misstates the quantitative risk because he presents -- I don't even think he uses the 3,915. He uses some number close to that number, and never discusses the 8,400 number as I recall, the total clubs purchased rather than the total clubs purchased.	17:31:27 17:31:30 17:31:32 17:31:35 17:31:40 17:31:45 17:31:47	3	BY MR. BESETTE:	17:33:17
4	Q. If the total number of clubs at a Costco purchased in the first half of 1998 was 8,400, and that represented 2 percent of Adams Golf sales of clubs in the same time period, by itself, is that an immaterial risk to Adams Golf, that number, just the quantitative risk?	17:31:49 17:31:54 17:31:59 17:32:05 17:32:12 17:32:16	4	Q. Why not?	17:33:17
5	MR. COLLINS: Vague and ambiguous.	17:32:19	5	A. For all the reasons that I have stated in my reports. It is not the 2 percent or any other percentages that you might -- that we could talk about speculatively or hypothetically, rather, that I focused on. Rather, I focused on the company's business model and the characteristics of the gray market and how those two coalesced in creating opportunity for the gray market and risks to the company.	17:33:18 17:33:20 17:33:24 17:33:27 17:33:32 17:33:35 17:33:38 17:33:43 17:33:46
6			14	Q. And I understand all that. I am putting that in a qualitative risk, okay. I mean, the company being more susceptible to gray marketing, as you've listed in your report, and all those reasons. I am just saying, the number of clubs sold by Costco in the first half of 1998 versus the number of clubs Adams Golf sold to the public, you know, its total, is 2 percent a material amount in your mind, just the number?	17:33:46 17:33:49 17:33:51 17:33:55 17:33:58 17:34:01 17:34:04 17:34:07 17:34:11
7			23	MR. COLLINS: Vague and ambiguous, outside the scope.	17:34:07 17:34:11 17:34:13 17:34:16

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1	Go ahead.	17:34:17	1	prior answer, please?	17:36:50
2	BY THE WITNESS:	17:34:18	2	(Record read.)	17:36:50
3	A. Given the context, yes.	17:34:18	3	BY MR. BESSETTE:	17:37:09
4	BY MR. BESSETTE:	17:34:20	4	Q. I'm sorry. So let me ask this: Are	17:37:09
5	Q. And you base that on all the	17:34:20	5	you referring to Mr. Grace referring to the clubs	17:37:14
6	qualitative factors that you've discussed?	17:34:23	6	sold, the 3,900 representing 2 percent, or the 8,400	17:37:18
7	A. Right.	17:34:26	7	representing 2 percent?	17:37:25
8	Q. Okay. You can't answer me without	17:34:26	8	MR. COLLINS: This is hopelessly	17:37:26
9	carving out the qualitative factors, is that what	17:34:29	9	confused at this point. Should we pull out the	17:37:29
10	you're trying to tell me?	17:34:32	10	Grace report? Would that be helpful?	17:37:32
11	MR. COLLINS: And it is outside the	17:34:32	11	MR. BESSETTE: Sure.	17:37:35
12	scope.	17:34:32	12	MR. COLLINS: Can I go off the record	17:37:36
13	Go ahead.	17:34:34	13	and try to cut through this quickly? Or on the	17:37:36
14	BY MR. BESSETTE:	17:34:36	14	record, I don't care. Let me stay on the record.	17:37:39
15	Q. Because I asked you to cut out the	17:34:36	15	MR. BESSETTE: All right.	17:37:39
16	qualitative factors.	17:34:36	16	MR. COLLINS: My recollection is that	17:37:40
17	MR. COLLINS: I guess he is asking,	17:34:37	17	Grace used the number of 3,915 or 38 and change. I	17:37:42
18	have you considered purely on the basis of numbers	17:34:38	18	don't think he used the number of 8,400. Now,	17:37:49
19	is it a serious risk. I think that's his question,	17:34:41	19	today, Paul, you have said that the 2 percent of	17:37:52
20	if you considered that, what's your answer.	17:34:41	20	total sales was arrived at using a numerator of	17:37:55
21	BY THE WITNESS:	17:34:44	21	8,400, or thereabout, as opposed to 3,900 or	17:38:02
22	A. I have thought about it, but I haven't	17:34:44	22	thereabouts. If that's the case, then whatever it	17:38:09
23	decontextualized it from all the other factors that	17:34:51	23	is, it is. And we can certainly work it out as a	17:38:12
24	we have talked about today.	17:34:53	24	matter of stipulation of agreed facts for trial.	17:38:15
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1	BY MR. BESSETTE:	17:34:54	1	But I think the problem lies in my recollection in	17:38:18
2	Q. All right. Fair enough. So tell me	17:34:54	2	imprecision in the Grace report if, in fact, you are	17:38:24
3	then, what you mean in your first point there, that	17:34:57	3	right that the 2 percent uses as a numerator 8,400,	17:38:27
4	Mr. Grace has misstated the quantitative risk that	17:35:01	4	as opposed to 3,900.	17:38:33
5	the gray market posed. Can you explain to me what	17:35:01	5	MR. BESSETTE: Okay. Let's take a	17:38:33
6	you mean then in those two sentences?	17:35:09	6	look. Well, Exhibit 7, page 6 reflects total pre	17:38:53
7	A. Let me just read the paragraph.	17:35:11	7	IPO numbers for U.S. and Canada in the 8,400 range.	17:38:58
8	Sorry, can you give me the question one more time?	17:35:11	8	MR. COLLINS: Pre IPO total as of	17:39:06
9	Q. I would like to know what you mean in	17:35:59	9	7-8-98?	17:39:09
10	those two sentences following the word "First."	17:36:02	10	MR. BESSETTE: Right.	17:39:10
11	A. Mr. Grace, in his report, talked	17:36:04	11	MR. COLLINS: My recollection is the	17:39:10
12	about -- did not talk about the clubs purchased by	17:36:15	12	report uses the 38 and change.	17:39:13
13	Costco, rather he talked about the clubs sold	17:36:18	13	THE WITNESS: That's my recollection	17:39:17
14	through Costco. And I think that's a misstatement	17:36:21	14	as well.	17:39:19
15	of the quantitative risk faced by the company.	17:36:24	15	MR. GLUCKOW: Off the record.	17:39:22
16	Q. And if you are mistaken, has he	17:36:28	16	(Off the record	17:39:22
17	misstated the quantitative risk?	17:36:31	17	discussion.)	17:39:42
18	A. Say that again? If I'm --	17:36:35	18	MR. COLLINS: Let's keep this on the	17:39:42
19	MR. COLLINS: Vague and ambiguous.	17:36:36	19	record now. We are now looking at page 18 of the	17:39:44
20	BY MR. BESSETTE:	17:36:38	20	Grace report, paragraph beginning "Documents	17:39:47
21	Q. If you are mistaken on that point, has	17:36:38	21	produced by Costco," and the witness is reading that	17:39:50
22	he then mistaken the quantitative risk?	17:36:40	22	paragraph.	17:39:53
23	A. If I am mistaken on which point?	17:36:47	23	BY THE WITNESS:	17:40:37
24	MR. BESSETTE: Would you read her	17:36:50	24	A. Okay.	17:40:37

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1 BY MR. BESETTE:	17:40:39	1 BY THE WITNESS:	17:43:17
2 Q. When you wrote your rebuttal report, 17:40:47		2 A. If you look at Table 4, the first line 17:43:18	
3 Professor, did you make the assumption that the 17:40:50		3 of the table is net sales. And if you read across 17:43:21	
4 2 percent of total sales occurring through Costco 17:40:53		4 that line, you can see that progressing into the 17:43:23	
5 stores was represented by the 3,200 in U.S. and 660 17:40:56		5 future sales were projected to take a downward turn. 17:43:26	
6 in Canada reflected in Mr. Grace's report? 17:41:06		6 BY MR. BESETTE:	17:43:30
7 A. Yes, I think so. 17:41:10		7 Q. Now, how do you square that with the 17:43:30	
8 Q. If the 2 percent being referred to 17:41:11		8 verbiage above, where Lehman says, "The company is 17:43:34	
9 here and in your report is actually based on the 17:41:26		9 expected to experience top line growth of over 30 17:43:34	
10 units Costco purchased, the 8,400, is it still your 17:41:32		10 percent through the year 2002"? 17:43:39	
11 testimony that Mr. Grace has misstated the 17:41:34		11 MR. COLLINS: Document speaks for 17:43:48	
12 quantitative risk as you've stated it in Paragraph 17:41:38		12 itself. 17:43:50	
13 21 of your report? 17:41:42		13 BY MR. BESETTE:	17:43:51
14 MR. COLLINS: Objection, vague and 17:41:42		14 Q. Well, let me ask you: Did you read 17:43:51	
15 ambiguous. 17:41:42		15 that sentence before you took the information from 17:43:53	
16 Go ahead. 17:41:43		16 Table 4 and used it in your report? 17:43:57	
17 BY THE WITNESS:	17:41:43	17 MR. COLLINS: I am just going to say, 17:44:02	
18 A. It would still be my testimony that he 17:41:43		18 I think we are talking apples and oranges. Since 17:44:05	
19 misstates the quantitative risk, yes. 17:41:46		19 you have very few minutes left, if you want -- 17:44:08	
20 BY MR. BESETTE:	17:41:49	20 MR. BESETTE: I don't believe I am. 17:44:08	
21 Q. And is that for the reasons that you 17:41:50		21 BY MR. BESETTE:	17:44:08
22 have already indicated the qualitative factors that 17:41:52		22 Q. Can you answer my question, please? 17:44:09	
23 you haven't divorced from your mind? 17:41:55		23 MR. COLLINS: Go ahead. 17:44:11	
24 A. Correct. 17:41:57		24	
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1 Q. Okay. And then I guess the second 17:41:57		1 BY THE WITNESS:	17:44:11
2 reason, which you say, "In addition, at the time of 17:41:59		2 A. I was focusing on Table 4, because as 17:44:12	
3 the company's IPO sales for the third and fourth 17:42:02		3 the verbiage in the paragraph proceeding it says, 17:44:15	
4 quarters of 1998 were projected to take a downward 17:42:07		4 "Lehman Brothers quarterly income statement 17:44:19	
5 turn." And you cite Exhibit 74 and Exhibit 98. 17:42:11		5 projections for '98 and '99 and annual projections 17:44:19	
6 A. Uh-huh. 17:42:14		6 through 2002 are set forth in Table 4." I then 17:44:23	
7 Q. Now, Exhibit 74 is a commitment 17:42:15		7 focused on Table 4. 17:44:27	
8 committee memorandum by Lehman Brothers? 17:42:20		8 BY MR. BESETTE:	17:44:29
9 A. Yep. 17:42:25		9 Q. Okay. And in particular I guess you 17:44:29	
10 Q. Which is, I believe dated April 28th. 17:42:25		10 looked at the third and fourth quarter, those 17:44:30	
11 So that was in existence prior to the IPO. The 17:42:29		11 columns? 17:44:33	
12 second document is Exhibit 98, which appears to be a 17:42:34		12 A. Yes. 17:44:35	
13 Nations Bank Montgomery Securities report. It's 17:42:42		13 Q. Okay. And then how about 1999, those 17:44:46	
14 dated August 4, 1998. Was that in existence at the 17:42:48		14 quarters, first and second? Were they higher or 17:44:57	
15 time of the IPO? 17:42:52		15 lower than estimates -- were they higher or lower 17:45:01	
16 A. The date would indicate not. 17:42:54		16 than the third and fourth quarters of '98? 17:45:05	
17 Q. Now, what is your basis in Exhibit 74 17:42:57		17 MR. COLLINS: The document speaks for 17:45:05	
18 for claiming that the projections -- well, for 17:43:01		18 itself. 17:45:06	
19 claiming that the company's sales for the third and 17:43:05		19 BY THE WITNESS:	17:45:07
20 fourth quarters of 1998 were projected to take a 17:43:09		20 A. The first and second quarters of 1999 17:45:09	
21 downward turn? 17:43:13		21 were both higher than the third and fourth quarters 17:45:14	
22 MR. COLLINS: The document speaks for 17:43:14		22 of '98. 17:45:17	
23 itself. 17:43:15		23 BY MR. BESETTE:	17:45:18
24 Go ahead. 17:43:17		24 Q. So I am just trying to understand. 17:45:18	

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1 What is the basis for your thought that the third 17:45:20	1 working very closely with Lehman Brothers, however. 17:47:47
2 and fourth quarters were projected to take a 17:45:23	2 Q. Do you know before the IPO whether the 17:47:50
3 downward trend -- Strike that. 17:45:25	3 company itself internally projected that Q3 and Q4 17:47:55
4 Did you consider that the third 17:45:28	4 were going to take a downward turn? 17:47:55
5 and fourth quarter numbers reflected seasonality? 17:45:29	5 A. I don't know. 17:47:57
6 Or did you think that the third and fourth quarter 17:45:32	6 Q. Does it make a difference to you 17:47:58
7 estimates as reflected in Exhibit 74 were due to 17:45:37	7 whether the company internally projected a downward 17:48:01
8 demand or something else? Did you give it any 17:45:42	8 turn for Q3 and Q4 versus the underwriters? 17:48:04
9 thought? 17:45:46	9 MR. COLLINS: Is the question related 17:48:09
10 MR. COLLINS: Objection. Exhibit 74 17:45:46	10 again to Paragraph 21? 17:48:10
11 speaks for itself. And, of course, Paragraph 21 of 17:45:48	11 MR. BESSETTE: Yes. Only related to 17:48:13
12 the rebuttal report speaks for itself. 17:45:51	12 Paragraph 21. 17:48:15
13 BY THE WITNESS: 17:45:56	13 BY THE WITNESS: 17:48:16
14 A. I considered why that might be. I 17:45:56	14 A. Can you ask the question again? 17:48:17
15 didn't particularly focus on that, on the reasons 17:46:01	15 MR. BESSETTE: Can you read it back, 17:48:17
16 for the downward turn. 17:46:03	16 please? 17:48:17
17 BY MR. BESSETTE: 17:46:05	17 (Record read.) 17:48:32
18 Q. Well, doesn't that matter in your 17:46:06	18 BY THE WITNESS: 17:48:32
19 opinion here, Professor? 17:46:08	19 A. There is a distinction there. 17:48:32
20 MR. COLLINS: In Paragraph 21, is that 17:46:09	20 BY MR. BESSETTE: 17:48:34
21 the question? 17:46:11	21 Q. Can you explain what it is? 17:48:34
22 BY MR. BESSETTE: 17:46:13	22 A. I think it is a fine distinction 17:48:35
23 Q. Well, aren't you saying that the third 17:46:14	23 relative to investors. The company's internal 17:48:37
24 and fourth quarter downward projections presented a 17:46:15	24 projections may have been slightly different from 17:48:45
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1 serious risk as it relates to the gray market? Your 17:46:19	1 Lehman Brothers. I don't know. If they were, I 17:48:48
2 whole rationale here is that if the gray market 17:46:23	2 would have to see where those projections were and 17:48:51
3 remained constant, with downward projections, it was 17:46:27	3 compared them to Lehman Brothers projections, and 17:48:54
4 going to have a bigger effect. I mean, that's what 17:46:30	4 then I might be able to come up with some sort of 17:48:54
5 you are saying in this paragraph, are you not? 17:46:33	5 thoughts about what the differences would be. 17:49:00
6 A. In this paragraph, I am not talking at 17:46:35	6 Q. What is your basis, Professor, for 17:49:00
7 all about the cause of the downward turn. 17:46:38	7 opining as to what investors would consider 17:49:03
8 Q. Right. I am questioning your 17:46:41	8 significant in terms of whether there were you 17:49:06
9 characterization of the downward turn. Because the 17:46:52	9 underwriter's projections or the company's 17:49:09
10 estimates for Q3 and Q4 were lower than Q1 and Q2 in 17:46:55	10 projections? What basis do you have to even make 17:49:11
11 your mind, as you stated in this paragraph, that is 17:47:02	11 that assessment? 17:49:14
12 a downward turn, is that right? 17:47:04	12 MR. COLLINS: Outside the scope of the 17:49:15
13 A. Yes. 17:47:09	13 opinion. 17:49:17
14 Q. Were these the company's projections 17:47:10	14 BY MR. BESSETTE: 17:49:17
15 or the underwriter's projections? 17:47:12	15 Q. Let me ask you: Do you have any basis 17:49:18
16 A. This is a Lehman Brothers report. 17:47:14	16 at all? 17:49:20
17 Q. Do you have any knowledge of whether 17:47:17	17 MR. COLLINS: Or do you have any 17:49:21
18 the company received this report or had any 17:47:18	18 opinion? 17:49:23
19 knowledge of what the underwriter's projections for 17:47:22	19 BY THE WITNESS: 17:49:23
20 the company were? 17:47:25	20 A. Right. Those are two different 17:49:24
21 A. I am trying to think about whether I 17:47:26	21 things. 17:49:27
22 have seen it in company documentation. I don't 17:47:32	22 BY MR. BESSETTE: 17:49:27
23 remember with any definite assurance that the 17:47:40	23 Q. Do you have a basis to assess the 17:49:28
24 company saw this report before its IPO. It was 17:47:44	24 difference to a potential investor -- Strike that. 17:49:30

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1	Do you have a basis to assess the	17:49:39	1 A. Okay. Wait. Hang on. Explain the	17:52:08
2	significance to a potential investor of	17:49:41	2 sentence in my report?	17:52:10
3	underwriter's estimates of future earnings or the	17:49:45	3 Q. Yes.	17:52:11
4	company's estimates of future earnings?	17:49:48	4 A. Okay. If you've got --	17:52:12
5	MR. COLLINS: Outside the scope.	17:49:51	5 hypothetically, if you have got a gray market	17:52:14
6	Please.	17:49:52	6 problem that remains -- in which sales volumes are	17:52:18
7	BY THE WITNESS:	17:49:52	7 not moving, gray marketed sales volumes are not	17:52:22
8	A. That is outside of my realm of	17:49:52	8 shifting upward or downward, it is remaining stable	17:52:26
9	expertise in this matter.	17:49:55	9 is what I mean to say. And you have got sales	17:52:32
10	BY MR. BESSETTE:	17:49:56	10 volumes that are decreasing. The amount of gray	17:52:33
11	Q. Do you have any basis to make that	17:49:57	11 market sales relative to the amount of total sales	17:52:36
12	assessment?	17:49:59	12 will be increasing.	17:52:39
13	MR. COLLINS: She just answered.	17:50:00	13 Q. Okay. And it is your testimony, I	17:52:41
14	BY THE WITNESS:	17:50:02	14 believe, in exhibit -- well, yeah. It is your	17:52:45
15	A. Again, it is outside the scope of my	17:50:03	15 testimony in this report that because of the	17:52:46
16	expertise in this matter.	17:50:05	16 downward projections for Q3 and Q4, that the gray	17:52:50
17	BY MR. BESSETTE:	17:50:05	17 market sales then happening, even if they didn't	17:52:54
18	Q. So you have not made that assessment	17:50:06	18 increase, if they just remained constant, presented	17:52:57
19	in this case, have you? Since it is outside your	17:50:06	19 a serious risk to the company that the company	17:53:00
20	expertise?	17:50:07	20 should have disclosed. Is that your view?	17:53:02
21	A. Right.	17:50:07	21 A. Yes.	17:53:04
22	Q. Is that the same thing as saying you	17:50:09	22 Q. Tell me how the company was supposed	17:53:05
23	have no basis to make that assessment?	17:50:12	23 to assess that serious risk if their own internal	17:53:08
24	A. I am not sure exactly what you are	17:50:14	24 estimates didn't reflect downward projections for Q3	17:53:13
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1	getting at. I make no assertion about the relative	17:50:15	1 and Q4?	17:53:16
2	importance of the Lehman Brothers reports and the	17:50:17	2 A. I don't know what the company's	17:53:16
3	company's internal assessments.	17:50:21	3 internal assessment did or didn't say.	17:53:17
4	Q. You say in Paragraph 21, after the	17:50:47	4 Q. So how is that risk knowable to the	17:53:17
5	cites to Exhibit 74 and 98, that "This," meaning the	17:50:49	5 company?	17:53:20
6	downward projections for Q3 and Q4, I assume,	17:50:54	6 A. Well, I assume that the company knew	17:53:20
7	"presented a serious risk that relative to total	17:51:00	7 something about Lehman Brothers projected results.	17:53:23
8	sales, even if gray market sales remain stable," as	17:51:04	8 Q. So, again, you are just assuming? You	17:53:30
9	opposed to continuing to escalate, "the magnitude of	17:51:08	9 are guessing?	17:53:33
10	the gray market problem would increase relative to	17:51:09	10 A. I wouldn't say I am guessing.	17:53:34
11	total sales." And your basis for -- Strike that.	17:51:12	11 Q. Do you have any factual basis to opine	17:53:35
12	That statement assumes, does it	17:51:23	12 that the company was aware pre IPO of Lehman's	17:53:39
13	not, that third quarter and fourth quarter results	17:51:25	13 internal earnings estimates?	17:53:45
14	were going to be actually lower -- Strike that. Not	17:51:33	14 MR. COLLINS: Outside the scope.	17:53:50
15	a good question.	17:51:33	15 BY THE WITNESS:	17:53:50
16	The downward turn in Q3 and Q4,	17:51:43	16 A. You asked me that earlier as well.	17:53:50
17	how did that relate to the risk of the gray market,	17:51:52	17 And I think I told you, I am not remember any	17:53:51
18	the magnitude of the gray market problem?	17:51:58	18 documents right now in which the company is	17:53:53
19	MR. COLLINS: You mean apart from what	17:52:02	19 internally discussing the Lehman report.	17:53:55
20	she wrote there?	17:52:04	20 BY MR. BESSETTE:	17:53:58
21	MR. BESSETTE: Yeah.	17:52:05	21 Q. So you have no actual knowledge that	17:53:58
22	BY MR. BESSETTE:	17:52:05	22 the company was aware. Nothing you can point to.	17:53:59
23	Q. I mean, just explain that sentence to	17:52:06	23 So how did you make the statement that there was a	17:54:02
24	me.	17:52:07	24 serious risk that the company was aware of or should	17:54:05

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1	have been aware of and therefore disclosed?	17:54:08	1 Adams Golf should have realized a serious risk due	17:56:05
2	MR. COLLINS: Asked and answered.	17:54:10	2 alone to a downturn in Q3 and Q4 due to seasonality	17:56:09
3	BY MR. BESSETTE:	17:54:14	3 when you don't know the effect seasonality has in	17:56:10
4	Q. Is it just based on assumption that	17:54:15	4 any given year to Adams Golf?	17:56:14
5	they were aware of the Lehman estimates?	17:54:18	5 MR. COLLINS: Asked and answered.	17:56:16
6	A. There was that. There is also, as	17:54:21	6 Do you have anything to add to	17:56:17
7	you've discussed and I've seen in a number of	17:54:22	7 what you already said?	17:56:18
8	documents in which Barney Adams is discussing	17:54:24	8 THE WITNESS: No, I don't.	17:56:18
9	seasonality, and that there is often a downward turn	17:54:28	9 BY MR. BESSETTE:	17:56:18
10	during that time of the year.	17:54:31	10 Q. Well, can you answer my question,	17:56:21
11	Q. Okay. So now you are saying that the	17:54:32	11 please?	17:56:22
12	seasonality effect in Q3 and Q4 should have put the	17:54:36	12 MR. COLLINS: Asked and answered.	17:56:45
13	company on alert that there is a serious risk that	17:54:40	13 BY THE WITNESS:	17:56:45
14	the gray marketing, even if it stayed at the same	17:54:43	14 A. Can you ask the question again?	
15	level of activity, would cause -- would cause an	17:54:47	15 MR. BESSETTE: Can you read it back,	
16	increase in the magnitude of the problem for the	17:54:53	16 please?	
17	company?	17:54:57	17 (Record read.)	
18	A. Yes.	17:54:57	18 BY THE WITNESS:	
19	Q. And do you know the percentage of	17:54:57	19 A. We talked about this already. The	17:56:48
20	decline on average that the company experienced in	17:54:59	20 Lehman report was out there in the world, and Adams	17:56:50
21	Q3 or Q4 due to seasonality alone versus Q1 and Q2	17:55:03	21 was working closely with Lehman. In addition, Adams	17:56:55
22	in any given year?	17:55:12	22 had its own experiences with seasonality and knew	17:56:59
23	MR. COLLINS: Vague.	17:55:14	23 the effect of that. And I have seen statements by	17:57:04
24			24 Barney Adams in which he addresses the seasonality	17:57:06
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1	BY THE WITNESS:	17:55:15	1 effects, particularly in that time of the year.	17:57:11
2	A. On average, no. In any given year,	17:55:16	2 BY MR. BESSETTE:	17:57:11
3	yes. And I stated those figures in 1998 in my	17:55:17	3 Q. Is it your testimony, Professor, that	17:57:11
4	report.	17:55:20	4 this internal Lehman commitment committee memo was	17:57:13
5	BY MR. BESSETTE:	17:55:20	5 public or otherwise made available to Adams Golf?	17:57:15
6	Q. You stated the estimates by Lehman.	17:55:20	6 A. Let me restate that.	17:57:18
7	A. No, I don't believe so.	17:55:23	7 MR. COLLINS: That's also asked and	17:57:20
8	Q. Okay. Where are those numbers?	17:55:23	8 answered.	17:57:20
9	A. Further on in 21, I believe.	17:55:25	9 Go ahead.	17:57:20
10	Q. Well, those are the actual numbers in	17:55:34	10 BY THE WITNESS:	17:57:20
11	Q3 and Q4. Are you saying that all of those are due	17:55:36	11 A. I don't know whether it was available	17:57:22
12	to seasonality?	17:55:40	12 to Adams Golf.	17:57:23
13	A. I don't know which part of that	17:55:41	13 BY MR. BESSETTE:	17:57:24
14	decline was due to seasonality.	17:55:45	14 Q. Well, you said in your testimony out	17:57:25
15	Q. Well, that was my question. My	17:55:48	15 there. I just wanted to know what you meant by out	17:57:27
16	question was and is, do you know what the percentage	17:55:51	16 there.	17:57:30
17	decline in Q3 and Q4 due to seasonality alone in any	17:55:52	17 A. It was in existence.	17:57:30
18	given year that Adams Golf suffered?	17:55:56	18 Q. Okay. Did you study the life cycle of	17:57:31
19	MR. COLLINS: Asked and answered, way	17:55:59	19 the Tight Lies club when doing your work in this	18:00:02
20	outside the scope.	17:56:01	20 case?	18:00:05
21	BY THE WITNESS:	17:56:01	21 A. What do you mean by the life cycle?	18:00:05
22	A. No.	17:56:02	22 Q. Are you aware that golf clubs	18:00:06
23	BY MR. BESSETTE:	17:56:02	23 generally have life cycles?	18:00:10
24	Q. So how can you sit here and say that	17:56:03	24 A. Am I aware now or was I aware then?	18:00:13

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1	Q. Well, when you did your report. 18:00:15	1 due diligence investigation by the underwriters in 18:02:26	
2	A. From reading the documents, I was 18:00:17	2 connection with the IPO of Adams Golf was reasonable 18:02:30	
3	aware of what the documents say regarding life 18:00:19	3 and adequate? 18:02:34	
4	cycles. 18:00:24	4 A. Yes. 18:02:35	
5	Q. No independent knowledge before you 18:00:25	5 Q. And do you have any intention of 18:02:35	
6	started your work in this case about life cycles of 18:00:32	6 offering any opinion on that question? 18:02:37	
7	various golf clubs or golf products? 18:00:35	7 A. No. 18:02:39	
8	A. No. 18:00:38	8 Q. Coming back to the drafting process 18:02:39	
9	Q. Do you know what the lifespan was of 18:00:38	9 that you used in preparing both your initial report 18:02:46	
10	the Tight Lies club? 18:00:58	10 and your rebuttal report. From the time that you 18:02:49	
11	MR. COLLINS: Vague and ambiguous. 18:01:00	11 first began working on this matter until we started 18:02:55	
12	BY THE WITNESS: 18:01:00	12 the deposition this morning, do you have an estimate 18:02:58	
13	A. I don't know. 18:01:05	13 of how many hours you've spent on this matter? 18:03:01	
14	BY MR. BESSETTE: 18:01:06	14 A. Yeah. From what was the beginning 18:03:04	
15	Q. You are aware that the company 18:01:06	15 time, I'm sorry? 18:03:09	
16	produced a newer one, a Tight Lies 2 I think or 18:01:08	16 Q. Whenever you started. 18:03:10	
17	whatever they called it, beyond the original, they 18:01:13	17 A. Whenever I started the matter until 18:03:13	
18	made a series of clubs? 18:01:16	18 now? Approximately, I believe it is something like 18:03:14	
19	A. Yes, I am aware that they were -- I 18:01:16	19 100 hours. 18:03:17	
20	believe there was more than just the two. I believe 18:01:19	20 Q. And has anybody else connected with 18:03:17	
21	there were additional. 18:01:21	21 the law school provided any research or other 18:03:19	
22	Q. Right. If Adams Golf had continued to 18:01:24	22 assistance to you in connection with your work? 18:03:22	
23	produce only the original Tight Lies, do you have an 18:01:28	23 A. I have had -- I have been working 18:03:24	
24	opinion here what would have happened to sales of 18:01:32	24 mostly at home. I have had difficulty downloading 18:03:27	
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1	the original Tight Lies over time? 18:01:35	1 PDF files, my secretary has assisted me in 18:03:30	
2	MR. COLLINS: Outside the scope. 18:01:37	2 delivering PDF files. 18:03:35	
3	BY THE WITNESS: 18:01:38	3 Q. And other than secretarial assistance, 18:03:36	
4	A. No. 18:01:38	4 have you had anybody doing any actual research to 18:03:39	
5	BY MR. BESSETTE: 18:01:39	5 help you? 18:03:41	
6	Q. Do you have any opinion on what would 18:01:41	6 A. No, no. 18:03:41	
7	have been the impact of gray marketing on the 18:01:43	7 Q. Who wrote your initial -- 18:03:42	
8	continued sales of only the original Tight Lies 18:01:48	8 A. Actually, let me back up. 18:03:44	
9	clubs if that's all the clubs Adams Golf had? 18:01:51	9 Q. Yeah. 18:03:44	
10	A. I would be really in the realm of 18:01:56	10 A. I have asked a librarian to pull some 18:03:46	
11	speculation to answer that question. 18:01:59	11 documents for me. But not doing actual research, 18:03:49	
12	MR. BESSETTE: We are good. I am done 18:02:00	12 just pulling documents. 18:03:52	
13	for now. Thanks. 18:02:03	13 Q. To pull documents that you identified 18:03:52	
14	EXAMINATION 18:02:03	14 yourself? 18:03:57	
15	BY MR. GLUCKOW: 18:02:03	15 A. That I had previously identified, yes. 18:03:57	
16	Q. Professor Ochoa, Paul Gluckow, I'm 18:02:03	16 Q. Who wrote your initial report? 18:03:58	
17	with Simpson Thacher. My firm represents the 18:02:09	17 A. I did. 18:03:59	
18	underwriter defendants in this matter. 18:02:11	18 Q. Is every word in that initial report 18:03:59	
19	I take it from your report you 18:02:13	19 yours? 18:04:02	
20	have had an opportunity to review Mr. Miller's 18:02:17	20 A. Yes. 18:04:02	
21	report as well? 18:02:20	21 Q. And did anyone other than yourself 18:04:02	
22	A. Correct. 18:02:21	22 have any input on the initial report? 18:04:05	
23	Q. And you understand that Mr. Miller is 18:02:21	23 A. I had discussions with Mr. Collins 18:04:10	
24	prepared to offer testimony concerning whether the 18:02:24	24 about the questions that I was being asked. I also 18:04:13	

		Page 310			Page 312
1	I think inquired about, as a general matter, the	18:04:16	1	been paid per hour prior to this engagement?	18:05:53
2	format of these types of reports, because I hadn't	18:04:20	2	A. I don't know. I don't know. I would	18:05:55
3	done them before.	18:04:23	3	have to do calculations in order to figure that out.	18:05:59
4	Q. Conversations like that with anyone	18:04:24	4	Q. Was it ever more than \$300 an hour?	18:06:01
5	besides Mr. Collins or just Mr. Collins?	18:04:26	5	A. I don't know. It is doubtful.	18:06:05
6	A. Yes. I think I stated earlier in my	18:04:29	6	Q. Was it ever more than \$200 an hour?	18:06:06
7	testimony that I had a conversation like that with I	18:04:32	7	A. Again, I don't know. And now we are	18:06:10
8	think it was with my sister-in-law, Julie Lanz.	18:04:36	8	getting into more shaky ground.	18:06:11
9	Q. Did she review the report?	18:04:38	9	Q. But you are confident that it was	18:06:14
10	A. No.	18:04:40	10	never more than 300 an hour?	18:06:16
11	MR. COLLINS: Excuse me. There may	18:04:42	11	A. Again, I said I don't know. I would	18:06:19
12	have been other lawyers besides me. I honestly	18:04:44	12	guess not.	18:06:20
13	don't remember.	18:04:48	13	MR. COLLINS: You know that Professor	18:06:21
14	BY THE WITNESS:	18:04:49	14	Ochoa said this is her first expert assignment.	18:06:23
15	A. Yeah, there may have been. It's true.	18:04:49	15	MR. GLUCKOW: Understood.	18:06:27
16	It's true. I don't remember either. Don Lewis, I	18:04:52	16	BY MR. GLUCKOW:	18:06:27
17	may have asked similar questions about the general	18:04:53	17	Q. When did you first form your opinion	18:06:30
18	style and format. I don't remember exactly.	18:04:58	18	in this matter?	18:06:31
19	BY MR. GLUCKOW:	18:05:03	19	A. My opinion evolved. It didn't happen	18:06:32
20	Q. You say in your initial report that	18:05:03	20	at any given point. My opinion was formed during	18:06:36
21	you are being compensated at your current hourly	18:05:06	21	the time that I was reviewing documents in	18:06:39
22	rate of \$425?	18:05:10	22	preparation for writing my report.	18:06:43
23	A. Yes.	18:05:12	23	Q. And when did you first begin writing	18:06:46
24	Q. And you testified earlier as to how	18:05:12	24	the report?	18:06:49
		Page 311			Page 313
1	you arrived at that figure?	18:05:12	1	A. That's a good question. They were due	18:06:49
2	A. Correct.	18:05:12	2	July 14th, is that right? I think I was working on	18:06:56
3	Q. Has anyone ever paid you \$425 per hour	18:05:12	3	it for approximately two weeks before that. Maybe a	18:06:59
4	before?	18:05:16	4	little bit longer.	18:07:04
5	A. I have charged either -- I don't	18:05:16	5	Q. You mentioned earlier a process where	18:07:04
6	remember the exact rate that I was billed at when I	18:05:18	6	the plaintiff's lawyers got back in touch with you	18:07:08
7	was an associate in New York, but it was somewhere	18:05:21	7	sometime in 2006, is that correct?	18:07:11
8	close to that.	18:05:24	8	A. Yes.	18:07:13
9	Q. You are saying when you worked at	18:05:24	9	Q. Did you remember that was, whether it	18:07:14
10	Clifford Chance in New York?	18:05:27	10	was April, May, June, July?	18:07:18
11	A. Yes.	18:05:28	11	A. I don't remember exactly. I know that	18:07:20
12	Q. You are saying you billed out at a	18:05:29	12	it was sometime right before Memorial Day.	18:07:22
13	rate of you think around \$425?	18:05:33	13	Q. So if that's correct, then, at some	18:07:24
14	A. I believe so.	18:05:34	14	point between Memorial Day and the end of June you	18:07:28
15	Q. But you weren't being paid by Clifford	18:05:35	15	began writing your report?	18:07:31
16	Chance \$425 an hour for your time?	18:05:39	16	A. Correct. I began -- sorry. No, I	18:07:32
17	A. No.	18:05:39	17	don't believe I began writing it at that point. I	18:07:36
18	Q. Have you ever been paid \$425 prior to	18:05:40	18	began doing work in preparation of writing the	18:07:40
19	this engagement in your life?	18:05:45	19	report.	18:07:43
20	MR. COLLINS: \$425.	18:05:47	20	Q. And then started writing it in early	18:07:43
21	BY MR. GLUCKOW:	18:05:47	21	July?	18:07:46
22	Q. Per hour?	18:05:48	22	A. I believe so. It may have been the	18:07:46
23	A. No.	18:05:48	23	end of June.	18:07:48
24	Q. What is the most that you have ever	18:05:49	24	Q. There are a couple of draft reports	18:07:49

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1 that have been produced. I will hand them to the 18:07:55 2 court reporter and ask them to be marked. 18:07:58 3 (Exhibit Nos. 308 & 18:07:58 4 309 were marked for 18:07:58 5 identification.) 18:08:17	1 first few lines. "Gray market activity can be 18:10:05 2 favorable, as it creates." And the final just says, 18:10:10 3 "Gray market activity creates." Do you recall the 18:10:13 4 process that led to the words "can be favorable" 18:10:16 5 being taken out of the report? 18:10:19
6 MR. COLLINS: For the record, 308 is 18:08:17 7 OCH 89 through 115. 309 is 116 through 136. 18:08:19	6 A. Yes. I thought that it made that 18:10:21 7 paragraph unclear. 18:10:23
8 BY MR. GLUCKOW: 18:08:19 9 Q. And actually, before I ask you about 18:08:33 10 those, just put those aside for a second. 18:08:36 11 In terms of the rebuttal report 18:08:39 12 that you submitted, was the drafting process for 18:08:41 13 that rebuttal report different in any way from what 18:08:43 14 we discussed with respect to the initial report? 18:08:45	8 Q. How so? 18:10:24 9 A. What I was trying to get at was the 18:10:25 10 effects that the gray marketing had on Adams Golf, 18:10:28 11 and really trying to get at the coalesce of Adams 18:10:33 12 Golf's business model with the gray market. I 18:10:39 13 didn't think it was relevant to talk about the 18:10:42 14 places where gray market activity is favorable for 18:10:44 15 consumers. 18:10:49
15 A. Only in that I reviewed additional 18:08:47 16 materials. 18:08:49 17 Q. But did you write the rebuttal report 18:08:50 18 yourself? 18:08:53 19 A. Yes. 18:08:53 20 Q. And every word of that rebuttal report 18:08:53 21 is your own? 18:08:56 22 A. Yes. 18:08:57 23 Q. And did anybody else have any input 18:08:57 24 into the drafting of that rebuttal report? 18:09:00	16 Q. And no one asked you to take out the 18:10:50 17 words "can be favorable"? 18:10:53 18 A. No. 18:10:54 19 Q. On the page that's marked OCH 0108, 18:10:54 20 Paragraph 31, I think it is page 20. There is a 18:10:59 21 reference today's exhibits. Do you know what that 18:11:07 22 refers to? 18:11:10 23 A. Yes. 18:11:12 24 Q. What is that? 18:11:12
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1 A. Again, I had questions about the style 18:09:04 2 and format. 18:09:06 3 Q. So turning to documents that have now 18:09:07 4 been marked as 308 and 309. To the extent, if at 18:09:09 5 all, that these differ from your final report, are 18:09:13 6 those changes, are those differences edits that you 18:09:15 7 yourself made, or on the other hands, ones that were 18:09:18 8 suggested to you by others? 18:09:21 9 A. They were edits that I myself made. 18:09:22 10 And in cases like the embarrassing apostrophe S 18:09:26 11 examples, those were suggested by others. 18:09:29 12 Q. Okay. But you can't recall any 18:09:30 13 substantive changes that were suggested by anyone 18:09:33 14 else? 18:09:37 15 A. You know, there were a couple of 18:09:37 16 others. Things that I opined on that were outside 18:09:38 17 of the scope of the questions I was asked. I 18:09:42 18 occasionally went beyond the scope of the questions 18:09:47 19 that were asked and wrote them in my draft, and was 18:09:48 20 asked to delete those portions. 18:09:49 21 Q. By whom? 18:09:51 22 A. By Todd Collins, Don Lewis. 18:09:52 23 Q. Let me just, as an example, in what 18:09:55 24 has been marked as 308, Paragraph 12, there is the 18:10:02	1 A. It referred to exhibits that I had 18:11:14 2 received via Fed Ex that day. 18:11:16 3 Q. And do you recall when this draft was 18:11:20 4 prepared? 18:11:23 5 A. Let's see. I believe that was -- this 18:11:23 6 is the expert report, so it was probably -- it was 18:11:29 7 about a week before the final report was due. 18:11:32 8 Q. And you were still receiving exhibits 18:11:35 9 at that point? 18:11:37 10 A. I was. 18:11:37 11 Q. What were you receiving? 18:11:37 12 A. I think there were exhibits that 18:11:39 13 were -- had recently been produced in connection 18:11:42 14 with depositions that were taken later in the 18:11:45 15 process. 18:11:47 16 Q. If you would turn to 309. At OCH 18:11:47 17 O135, toward the back. There is a reference to "See 18:11:59 18 notes on this" in brackets. Do you know what that 18:12:03 19 refers to? 18:12:13 20 A. It refers to my own notes. 18:12:13 21 Q. Did you take notes in connection with 18:12:15 22 your work in the matter? 18:12:18 23 A. I took some notes while I was going 18:12:19 24 through the exhibits, so that I could have a 18:12:21

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1	synopsis of the things I read.	18:12:24	1	MR. COLLINS: Documents relied on, I	18:14:14
2	Q. Where are those?	18:12:25	2	believe. Documents relied on and documents, I	18:14:17
3	A. Those are in my home.	18:12:26	3	believe, exchanged. I think that's it. But if	18:14:20
4	Q. Have you turned those over to the	18:12:29	4	there is something --	18:14:22
5	plaintiff's counsel?	18:12:31	5	MR. GLUCKOW: There is an e-mail	18:14:22
6	A. No.	18:12:31	6	record which we can talk about once we are finished	18:14:24
7	Q. Any reason why not?	18:12:32	7	here.	18:14:25
8	A. I haven't been asked.	18:12:32	8	MR. COLLINS: That's fine. And just	18:14:26
9	Q. Were you asked for all the materials	18:12:32	9	one other --	18:14:26
10	that you had looked at and considered in connection	18:12:33	10	MR. GLUCKOW: Which we have --	18:14:27
11	with preparing your reports?	18:12:39	11	MR. COLLINS: That's fine. I mean,	18:14:27
12	A. I was -- that's a good question. I	18:12:40	12	whatever it is we have agreed to we will produce to	18:14:27
13	was asked to -- can you rephrase the question	18:12:44	13	you. We believe we have already done that. In	18:14:30
14	actually? Or restate the question, not rephrase it.	18:12:48	14	addition to that, just to make this quick, you may	18:14:33
15	Q. What, if anything, did the lawyers for	18:12:51	15	want to ask what Document 135 is. Maybe that's your	18:14:36
16	the plaintiffs ask you to give them so that they	18:12:52	16	next question.	18:14:42
17	could produce in the litigation your files?	18:12:56	17	MR. GLUCKOW: You lost me.	18:14:42
18	A. To give you a direct quote would be	18:12:57	18	MR. COLLINS: 135, you might ask	18:14:54
19	beyond my ability at this moment. But I know that	18:13:01	19	Professor Ochoa what that is. That's all.	18:14:54
20	they did ask me, for example, to produce the	18:13:06	20	MR. GLUCKOW: Where is that coming	18:14:54
21	articles that I read and reviewed, and any other	18:13:08	21	from?	18:14:54
22	documents that I read and reviewed in anticipation	18:13:11	22	MR. COLLINS: 135, I think she will	18:14:56
23	of writing my report.	18:13:14	23	tell you are notes that she made. It is not part of	18:14:58
24	Q. Anything else?	18:13:15	24	the draft.	18:15:01
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1	A. Yes. The materials that I used in	18:13:17	1	MR. GLUCKOW: I just don't know what	18:15:01
2	preparing -- that I assign to my class, which we	18:13:23	2	you mean when you say Document 135.	18:15:01
3	have already talked about. And I'm trying to think	18:13:26	3	MR. COLLINS: Bates Stamp OCH 0135 at	18:15:04
4	if there was anything else. I believe I've turned	18:13:28	4	the end of Exhibit 309.	18:15:11
5	over everything I was asked for.	18:13:31	5	MR. BESSETTE: Well, you said Exhibit	18:15:11
6	Q. Is there anything that you have in	18:13:33	6	135, so...	18:15:13
7	your possession that relates to your work on this	18:13:35	7	MR. GLUCKOW: Oh. You are saying on	18:15:13
8	matter other than your notes we have talked about	18:13:37	8	page 135. No, I understand that.	18:15:14
9	that you haven't given to plaintiff's counsel?	18:13:40	9	BY MR. GLUCKOW:	18:15:14
10	A. No.	18:13:41	10	Q. I think what Mr. Collins is saying,	18:15:16
11	MR. COLLINS: And I can comment on	18:13:49	11	Professor, is that those were notes that were	18:15:20
12	that whenever you want me to.	18:13:50	12	keeping for yourself at the back of your draft	18:15:21
13	MR. GLUCKOW: I would just ask,	18:13:53	13	report that you were considering whether you were	18:15:25
14	obviously, that Professor Ochoa provide plaintiff's	18:13:55	14	going to put them into the report, is that correct?	18:15:25
15	counsel with her notes as soon as possible, and that	18:13:58	15	A. Actually, they may have been a	18:15:26
16	those be produced in the case.	18:14:01	16	separate document, but yes.	18:15:27
17	MR. COLLINS: That is not the	18:14:02	17	Q. And were those the notes you were	18:15:29
18	agreement in this case as to what we are going to	18:14:03	18	referring to earlier when you were talking about	18:15:31
19	produce. You know that. The documents we are going	18:14:03	19	"see notes on this"?	18:15:35
20	to produce --	18:14:07	20	A. No.	18:15:36
21	MR. GLUCKOW: I don't know that. My	18:14:09	21	Q. You have handwritten notes?	18:15:36
22	recollection is that the exchange that we had in	18:14:09	22	A. I have some handwritten notes.	18:15:38
23	terms of the agreement was that it specifically did	18:14:11	23	Q. Right. And I assume that you prepared	18:15:39
24	include --	18:14:13	24	those handwritten notes as you were, as you said,	18:15:41

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1 reviewing materials, correct?	18:15:43	1 Par and Manatee?	18:18:12
2 A. I prepared handwritten notes as I was	18:15:44	2 A. Yes.	18:18:13
3 reviewing the exhibits and other materials in	18:15:47	3 Q. And do you recall that there was	18:18:14
4 connection with this.	18:15:52	4 discussion in the documents about whether those two	18:18:17
5 Q. So those are certainly part of the	18:15:52	5 authorized retailers had been involved in potential	18:18:20
6 work, the work product that you generated in terms	18:15:54	6 transshipments?	18:18:27
7 of your consideration of the substantive matters as	18:15:57	7 A. Can you ask that question again? I	18:18:28
8 part of your engagement, correct?	18:16:01	8 was sort of flipping through the catalog in my head	18:18:32
9 A. I don't think of them as product. I	18:16:04	9 of the documents.	18:18:33
10 think of them as a way of indexing the information	18:16:06	10 Q. Sure. Do you recall that there was	18:18:33
11 that I reviewed.	18:16:09	11 discussion in the documents about possible	18:18:37
12 Q. They reflect your thought process,	18:16:09	12 transshipments going through King Par and Manatee?	18:18:39
13 right?	18:16:12	13 A. I don't recall right now.	18:18:42
14 A. Process, yes.	18:16:12	14 Q. In what way, if you recall, did you	18:18:46
15 Q. And did you refer to those notes as	18:16:13	15 rely on Manatee's or King Par's possibly involvement	18:18:49
16 you were preparing your report?	18:16:17	16 as transshippers in preparing your report?	18:18:59
17 A. Yes.	18:16:18	17 A. I don't recall right now.	18:19:02
18 Q. So you obviously relied on them,	18:16:18	18 Q. Do you recall any way in which Manatee	18:19:03
19 correct?	18:16:23	19 or King Par influenced your opinions in this matter?	18:19:07
20 A. I think it's a strange question. The	18:16:23	20 A. I don't recall right now.	18:19:12
21 notes were a way of my -- offering me a way to	18:16:28	21 Q. In your report, your initial report	18:19:19
22 reengage with the exhibits themselves.	18:16:33	22 that is, on page 21.	18:19:21
23 Q. Right. And you looked at them as you	18:16:34	23 MR. COLLINS: Now you are referring to	18:19:30
24 were working on your report?	18:16:37	24 Exhibit 303, the final report?	18:19:32
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1 A. Yes.	18:16:38	1 MR. GLUCKOW: Correct. I'm sorry.	18:19:34
2 Q. Have you ever, while you were a	18:16:39	2 BY MR. GLUCKOW:	18:19:34
3 lawyer, had any complaints lodged against you in	18:16:48	3 Q. The final report, 303, page 21,	18:19:36
4 connection with your professional work?	18:16:52	4 Paragraph 30. The first line of Paragraph 30 says,	18:19:37
5 A. No.	18:16:54	5 "At the time of its initial public offering,	18:19:40
6 Q. Have you ever been involved in any	18:16:54	6 Callaway had disclosed." I am assuming the "its" is	18:19:44
7 lawsuits? Have you ever been sued?	18:16:59	7 Adams, right?	18:19:44
8 A. Not that I know of.	18:17:01	8 A. Yes.	18:19:44
9 Q. Have you ever been subject to any	18:17:03	9 Q. Okay. At the time of Adam's public	18:19:45
10 disciplinary proceedings in connection with being an	18:17:08	10 offering, Callaway had disclosed, and then you have	18:19:48
11 attorney or otherwise?	18:17:11	11 a disclosure from a Callaway public offering,	18:19:52
12 A. No.	18:17:12	12 correct?	
13 Q. Any criminal record?	18:17:12	13 MR. COLLINS: No.	
14 A. No.	18:17:13	14 BY THE WITNESS:	
15 Q. Ever been arrested?	18:17:14	15 A. I'm sorry.	
16 A. No.	18:17:18	16 BY MR. GLUCKOW:	
17 Q. In preparing your report, did you rely	18:17:18	17 Q. The Callaway 10K?	18:19:52
18 in any way on the references in the documents to	18:17:49	18 A. Yes.	18:19:53
19 possible transshipments going through either King	18:17:55	19 Q. Correct?	18:19:54
20 Par or Manatee?	18:17:59	20 A. Yes.	18:19:54
21 A. In preparing my reports, did I rely on	18:18:00	21 Q. And then after the block quote, you	18:19:57
22 documents that referred to King Par or Manatee Golf?	18:18:03	22 say that, "This is notable, because in determining	18:20:00
23 If they were in the documents, I did.	18:18:07	23 whether a given disclosure is necessary, it is	18:20:03
24 Q. And do you recall those names, King	18:18:09	24 common to consult the risk factors described by	18:20:18

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1 others in a given market segment when drafting	18:20:21	1 MR. GLUCKOW: Read it back.	18:22:01
2 disclosure documents, such as the company's	18:20:24	2 (Record read.)	18:22:01
3 prospectus." Do you see that?	18:20:27	3 BY THE WITNESS:	18:22:19
4 A. Yes.	18:20:28	4 A. I don't have actual knowledge, no.	18:22:19
5 Q. What was or is the basis for your	18:20:29	5 BY MR. GLUCKOW:	18:22:23
6 statement as to what is common in terms of drafting	18:20:33	6 Q. I am sure you agree that the mention	18:22:23
7 risk factors?	18:20:35	7 of a risk in one company's disclosure, which may be	18:22:29
8 A. My experience at Clifford Chance.	18:20:35	8 true for that company, is in no way determinative of	18:22:35
9 Q. And what was that experience at	18:20:38	9 whether that same risk should go into another	18:22:38
10 Clifford Chance?	18:20:40	10 company's disclosure, correct?	18:22:41
11 MR. COLLINS: Asked and answered.	18:20:40	11 MR. COLLINS: Outside the scope.	18:22:43
12 BY THE WITNESS:	18:20:40	12 Go ahead.	18:22:44
13 A. We have talked about my experience at	18:20:41	13 BY THE WITNESS:	18:22:44
14 Clifford Chance.	18:20:41	14 A. Not alone. Correct.	18:22:45
15 BY MR. GLUCKOW:	18:20:41	15 BY MR. GLUCKOW:	18:22:45
16 Q. Oh, so it's what we talked about	18:20:44	16 Q. Pardon me?	18:22:45
17 before when you were a summer associate in London	18:20:45	17 A. Not alone. Correct.	18:22:45
18 working on the --	18:20:46	18 Q. Because every situation is different,	18:22:47
19 A. No. I also worked at Clifford Chance	18:20:46	19 correct?	18:22:50
20 after that time.	18:20:48	20 A. Correct.	18:22:50
21 Q. And did you have any involvement in	18:20:49	21 Q. And what is appropriate for one	18:22:50
22 advising clients? I think we have already	18:20:51	22 company may be inappropriate for another company,	18:22:53
23 established, in fact, that you did not have any	18:20:54	23 correct?	18:22:56
24 involvement in advising clients on what should or	18:20:56	24 MR. COLLINS: Outside the scope.	18:22:56
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1 should not go into risk factors when drafting SEC	18:20:59	1 Go ahead.	18:22:58
2 files, correct?	18:21:02	2 BY THE WITNESS:	18:22:58
3 A. I see a distinction between advising	18:21:02	3 A. Now we are into an area that I don't	18:22:58
4 clients and observing others advising clients.	18:21:05	4 feel comfortable commenting on.	18:23:00
5 Q. And you saw others advising clients?	18:21:08	5 BY MR. GLUCKOW:	18:23:00
6 A. Yes.	18:21:10	6 Q. Okay.	18:23:04
7 Q. And what did you see?	18:21:11	7 MR. COLLINS: Counsel, you have	18:23:04
8 A. What do you mean?	18:21:13	8 one minute.	18:23:05
9 Q. Well, do you consider yourself an	18:21:16	9 MR. GLUCKOW: I have nothing further.	18:23:09
10 expert on advising clients on what should or should	18:21:18	10 MR. COLLINS: I have one question.	18:23:12
11 not go in an SEC file?	18:21:22	11 EXAMINATION	18:23:12
12 A. No.	18:21:24	12 BY MR. COLLINS:	18:23:12
13 Q. Okay. And do you consider yourself an	18:21:24	13 Q. Do you recall Exhibit 7 to the Grace	18:23:15
14 expert on what risk factors should or should not go	18:21:29	14 report?	18:23:15
15 in an SEC filing?	18:21:37	15 A. Yes.	18:23:20
16 A. No.	18:21:40	16 Q. You can pull it out, but you don't	
17 Q. In fact, you have no knowledge one way	18:21:40	17 need to. If you recall it?	
18 or the other whether the company or the underwriters	18:21:47	18 A. I recall it. If we can pull it out,	
19 or the company's lawyers or the underwriter's	18:21:50	19 though, so I can have it in my hands, that would be	
20 lawyers or anyone else involved in drafting the	18:21:53	20 great.	
21 prospectus actually looked at the Callaway 10K,	18:21:56	21 Q. Sure. Does this support your view	18:23:44
22 isn't that true?	18:22:01	22 that gray marketing was increasing and was a serious	18:23:46
23 MR. COLLINS: I need that question	18:22:01	23 risk for the IPO?	18:23:51
24 back, please. Say it again, please.	18:22:01	24 A. Yes.	18:23:55

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1 MR. COLLINS: No more questions, thank 18:23:5
2 you. Gentlemen, thank you. 18:23:58
3 MR. BESSETTE: Okay. Thank you. 18:23:59
4 (FURTHER DEONENT
5 SAYETH NOT.)
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6 1 STATE OF ILLINOIS)
7) SS:
8 2 COUNTY OF COOK)
9 I, KATHLEEN J. PACULT, a Certified
10 Shorthand Reporter within and for the County of
11 Cook, State of Illinois, do hereby certify:
12 That previous to the
13 commencement of the examination of the witness,
14 the witness was duly sworn to testify the whole
15 truth concerning the matters herein;
16 That the foregoing deposition
17 transcript was reported stenographically by me,
18 was thereafter reduced to typewriting under my
19 personal direction and constitutes a true record
20 of the testimony given and the proceedings had;
21 That the said deposition was
22 taken before me at the time and place specified;
23 That I am not a relative or
24 employee or attorney or counsel, nor a relative
or employee of such attorney or counsel for any
of the parties hereto, nor interested directly
or indirectly in the outcome of this action.

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1
2
3 I hereby certify that I have read the
4 foregoing transcript of my deposition given on , at
5 the time and place aforesaid, and I do again
6 subscribe and make oath that the same is true,
7 correct, and a complete transcript of my deposition
8 so given as aforesaid, as it now appears.
9

10
11
12

13 CHRISTIANA OCHOA - WITNESS
14 CORRECTION SHEET(S) ATTACHED

15 SUBSCRIBED AND SWORN TO
before me this _____ day
16 of _____, A.D., 2006

17 Notary Public
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1 IN WITNESS WHEREOF, I do hereunto
2 set my hand, this 16th day of August, 2006.
3
4

5 Kathleen J. Pacult
6 Certified Shorthand Reporter
7

8 C.S.R. Certificate No. 84-004180.
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